Story —

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~433~~ 203

JOHN J. TOWNSEND, EXECUTOR OF FREDERIC BRONSON, DECEASED, WHO WAS EXECUTOR OF ARTHUR BRONSON, DECEASED, APPELLANT,

vs.

EDWARD CHAPPELL, SENIOR, EDWARD CHAPPELL, JUNIOR, AND JOHN N. CHAPPELL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WISCONSIN.

FILED MARCH 16, 1870.

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1 Circuit court of the United States of America for the district of Wisconsin.

UNITED STATES OF AMERICA,
District of Wisconsin, ss:

At a stated term of the circuit court of the United States of America for the district of Wisconsin, begun and held according to law at the city of Milwaukee, in said district, on the second Monday of September, A. D. 1869, being the thirteenth day of September, A. D. 1869—present, the Honorable Andrew G. Miller, district judge, presiding; Charles S. Hamilton, marshal; Edward Kurtz, clerk—among other the following proceedings were had, to wit:

JOHN J. TOWNSEND, EXECUTOR OF FREDERIC Bronson, deceased, who was executor of Arthur Bronson, deceased,
vs.
EDWARD CHAPPELL, SENIOR, EDWARD CHAPpell, junior, & John N. Chappell, defendants. } In equity.

Be it remembered that heretofore, to wit, on the 18th day of February, A. D. 1868, came Frederic Bronson, executor of the last will & testament of Arthur Bronson, deceased, by his solicitor, Mr. A. L. Cummings, and filed his bill of complaint against the above-named defendants as follows, to wit:

Bill of complaint.

To the judges of the circuit court of the United States for the district of Wisconsin:

Frederic Bronson, executor of the last will & testament of Arthur Bronson, deceased, of the city of New York, in the county and State of New York, & a citizen of said State of New York, brings this his bill against Edward Chappell, senior, Edward Chappell, junior, & John Chappell, all of them citizens of the State of Wisconsin, resident at or near the town of Elk Grove, in the county of Lafayette, in said State.

2 And thereupon your orator complains & says that said defendants heretofore, to wit, on the thirteenth day of February, in the year of our Lord one thousand eight hundred & sixty-five, executed & delivered to your orator a certain indenture of mortgage of that date, (an attested copy of which is herewith filed & marked Exhibit A, & prayed to be taken as a part of this your orator's bill of complaint,) by which indenture of mortgage certain lands therein described were pledged for the payment of certain monies due from said defendant to your orator as a part of the purchase-money of said lands, to wit, the sum of five thousand three hundred & forty-three $\frac{60}{100}$ dollars due by their bond of that date, (which bond is herewith exhibited by an attested copy marked Exhibit B, & prayed to be taken as a part of this your orator's bill of complaint,) which bond & deed the said Edward Chappell, senior, signed by the name & style of Edward Chappell, sr., & the said Edward Chappell, junior, signed by the name & style of Edward Chappell, jr., & the said John Chappell signed by the name & style of John N. Chappell, as will appear by inspection of Exhibits A & B.

And your orator further shows that, by the terms of the conditions of

said bond, the whole sum of five thousand three hundred & forty-three $\frac{60}{100}$ dollars was to be paid as follows, viz:

"Seven hundred and eighty-one $\frac{20}{100}$ dollars ($781 20) on 30th November, 1865, and the remaining sum of four thousand five hundred & sixty-two $\frac{44}{100}$ dollars ($4,562 44) in seven equal annual payments of six hundred & fifty-one $\frac{77}{100}$ dollars ($651 77) from the 13th day of February, 1865, the first of which annual payments to be on the 13th February, 1866, & the last of said annual payments to be on the thirteenth day of February, 1872, which will be in the year one thousand eight hundred and seventy-two, and the interest thereon on above several sums of money to be computed from the day of the date hereof, at and after the rate of seven per cent. per annum, and to be paid in the city of New
3 York at the dates above specified for said payments."

That by the terms of said contract there was due, on the 30th November, A. D. 1865, the sum of ($1,077 31) one thousand & seventy-seven $\frac{31}{100}$ dollars, which sum was wholly unpaid; that on the 13th February, A. D. 1866, there was due by said contract the sum of ($918 29) nine hundred & eighteen $\frac{29}{100}$ dollars, which was wholly unpaid; that on the 13th February, 1867, there was due by said contract the sum of ($925 51) nine hundred & twenty-five $\frac{51}{100}$ dollars, which was wholly unpaid; and that the only payment made by said defendants to orator on said contract was the sum of ($927 13) rec'd by orator on the 23d day of February, A. D. 1867, which, when rec'd, was credited to the account of said defendants in payment of interest to that date; & besides the payment of interest to that date, there was credited on the principal the sum of ($151 04) one hundred & fifty-one $\frac{04}{100}$ dollars on said 23d February, A. D. 1867.

And your orator further shows that, by the terms of said mortgage & bond, "should any default be made in the payment of the said interest, or of any part thereof in the payment of the principal, as the same is above specified to be paid, on any day whenever the same is made payable as above expressed, and should the same remain unpaid and in arrear for the space of thirty days, then and from thenceforth the aforesaid principal sum of five thousand three hundred & forty-three $\frac{60}{100}$ dollars, ($5,343 60,) with all arrearage of interest thereon, shall, at the option of the said Frederic Bronson, executor, &c., his executors or other legal representatives, become & be due and payable immediately thereafter, although the period above limited for the payment thereof may not have expired, anything hereinbefore contained to the contrary thereof in anywise notwithstanding."

And your orator further shows that, by the terms of said contract, by reason of the failure of the said defendants to pay the several payments specified in said bond, according to the tenor & effect thereof, said principal sum, & the whole thereof, & the interest thereon, (except the
4 payment of interest & $151 04 on the principal paid on & up to the 23d day of February, 1867,) became due & payable at the option of your orator, whose choice it is to treat the same as wholly due, & to foreclose said mortgage accordingly.

And your orator further shows that the said defendants, combining & confederating together to injure & defraud your orator, wrongfully & fraudulently pretend to have made certain payments to one William C. Bostwick, at Galena, Illinois, who, it is pretended, was the agent or attorney of your orator to receive the same, although the said defendants well knew that by the terms of said contract said payments were to be made to your orator in the city of New York, & that the said Bostwick

was not the agent or attorney of your orator to receive said payments; and that if any such payments were made by them to the said Bostwick (as is by them pretended) they were made by them to the said Bostwick for the purpose of being remitted to orator by said Bostwick, acting as their agent or attorney, and not as the agent or attorney of your orator, and were never remitted by him, & never received by your orator.

And your orator shows that no such money or payments were ever received by him on said contract, and that the said Bostwick, after said money is said to have been paid to him by said defendants, became (as orator is informed & believes) & still remains utterly & hopelessly insolvent. And your orator charges and avers that the said Bostwick was never authorized by him to receive, as his agent or attorney, or otherwise, any of the payments due on said bond; and also further avers that said bond & mortgage, since the execution of the same, have not, or either of them, been out of orator's possession at any time for any purpose whatever; and that orator has been at all times hitherto ready & willing to receive payments thereon, according to the tenor & effect of said bond.

But so it is, that since the failure of said Bostwick said defendants have wrongfully & fraudulently conceived the design of pretending
5 that the said Bostwick was the agent or attorney of your orator, & of making your orator responsible for the acts of their said agent, William C. Bostwick, under said pretense that he was the agent or attorney of your orator. And in pursuance & furtherance of this fraudulent design, they, the said defendants, have refused, & do still refuse, to make any further payments on said bond, unless the money supposed to have been entrusted by them to the said Bostwick to be by him remitted for them to your orator in New York for the payment of said instalments on said bond, & which were never received by your orator, shall first be allowed them by your orator and credited on said bond.

In tender consideration of the premises your orator prays that the said Edward Chappell, senior, Edward Chappell, junior, and John Chappell be made defendants herein, & that subpœna issue to them to bring them into court to answer & defend this bill, & show cause, if any exists, why said mortgage should not be foreclosed.

And your orator shows further that a considerable portion of said lands described in said mortgage is woodland, covered with valuable timber, in which timber a large part of the value of said lands consist. And your orator has reason to fear, & does fear, that the said defendants are committing waste on said lands by the destruction of said timber, & prays that they may be restrained therefrom by a writ of injunction from this court.

And your orator prays that said defendants above named make answer unto this bill without oath, (their oaths being hereby expressly waived,) and that, on final hearing of this cause, said mortgage be foreclosed, & said lands therein described & set forth be sold for the payment of said indebtedness, to wit, the sum of five thousand three hundred & forty-three $\frac{60}{100}$ dollars, & interest thereon, according to the tenor of said bond; and also for such other & further relief as to justice
6 and equity may appertain & your orator be entitled to in the premises.

& your orator, as in duty bound, will ever pray, &c.

FREDERIC BRONSON, *Ex'r, &c.*

A. L. CUMMINGS, *Solicitor.*

On filing this bill & exhibits & cost-bond, the clerk will please issue subpœna to said defendants at rule-day, 1st Monday in April, 1868, unless otherwise required by law.

A. L. CUMMINGS,
Sol. for Comp't.

EXHIBIT A.

Mortgage.

"Exhibit A" of bill, filed therewith.

This indenture, made the thirteenth day of February, in the year one thousand eight hundred and sixty-five, between Edward Chappel, senior, Edward Chappel, junior, and John Chappel, of Lafayette County, State of Wisconsin, of the first part, and Frederic Bronson, of the city, county, and State of New York, executor of the last will and testament of Arthur Bronson, late of said city, deceased, of the second part:

Whereas the said Edward Chappel, senior, Edward Chappel, jr., and John Chappel are justly indebted to the said party of the second part in the sum of five thousand three hundred and forty-three $\frac{61}{100}$ dollars, ($5,343 60,) lawful money of the United States of America, secured to be paid by their certain bond or obligation bearing even date with these presents, in the penal sum of ten thousand dollars, lawful money as aforesaid, conditioned for the payment of the said first-mentioned sum, five thousand three hundred and forty-three $\frac{60}{100}$ dollars, ($5,343 60,) and being for deferred payments of the purchase-money, and consideration for the lands, premises, and real estate hereinafter described, payable as follows, viz, $781 20, November 30th, 1865, and the remaining sum of $4,562 40 in seven equal annual payments of $651 77, from the 13th February, 1865, which said bond also contains an agreement, that, should any default be made in the payment of the said interest, or any part thereof, or in payment of the principal as the same is specified in said bond to be paid, on any day whereon the same is made payable, as above expressed, and should the same remain unpaid and in arrear for the space of thirty days, that then, and from thenceforth, that is to say, after the lapse of the said thirty days, the aforesaid principal sum of five thousand three hundred and forty-three $\frac{60}{100}$ dollars, with all arrearage of interest thereon, shall, at the option of the said party of the second part, or his legal representatives, become and be due and payable immediately thereafter, although the time limited for the payment thereof may not then have expired, anything in the said bond contained to the contrary thereof in any wise notwithstanding, as by the said bond or obligation, and the condition thereof, and reference being thereunto had, may more fully appear:

Now this indenture witnesseth that the said parties of the first part, for the better securing the payment of the said sum of money mentioned in the condition of the said bond or obligation, with interest thereon, according to the true intent and meaning thereof, and also for and in consideration of the sum of one dollar to them in hand paid by the said party of the second part at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, released, conveyed, and confirmed, and by these presents do grant, bargain, sell, alien, release, convey, and confirm, unto the said party of the second part, and to his heirs and as-

signs forever, all those certain pieces or parcels of land, situate, lying, and being in the county of Lafayette, and State of Wisconsin, known and distinguished as the southwest quarter and the south half of southeast quarter of section thirty-three, in township three, of range one, (S. W. ¼ and S. ½ of S. E. ¼, S. 33, T. 3, R. 1,) excepting and reserving, however, therefrom that portion conveyed by the deed of the party of the second part hereto to Stephen Webster, of this date, described and
8 bounded as follows: Commencing at the northwest corner of northwest quarter of southwest quarter; running thence south nineteen chains thirty-four links; thence east three chains to the centre of the Mineral Point and Galena road; thence north three and three-quarter degrees east nineteen chains thirty-five links; thence west four chains twenty-three links to the place of beginning, containing seven acres of land more or less; and also that portion conveyed by the deed of the party of the second part hereto to Joseph Thomas, of this date, bounded and described as follows: Commencing at the southwest *quarter* of the southwest quarter of the southwest quarter of said section thirty-three; running thence north twenty chains fifty-five links; thence east three chains to middle of the Mineral Point and Galena road; thence south three and one-quarter degrees west twenty chains fifty-nine links; thence west one chain seventy-five links to the place of beginning, containing four acres and eighty-eight hundredths of an acre, more or less; the land hereby intended to be conveyed containing two hundred and twenty-eight acres and twelve one-hundredths of an acre, after the above reservations, be the same more or less, subject, nevertheless, to the right of a public highway across said land, running from Mineral Point to Galena; the said premises being the same as conveyed by the said party of the second part to the said parties of the first part hereto by a certain indenture bearing even date herewith, and this mortgage is given to secure a part of the consideration-money therefor:

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said parties of the first part, of, in, and to the same, and every part and parcel thereof, with the appurtenances:

To have and to hold the above granted and described premises,
9 with the appurtenances, unto the said party of the second part, his heirs and assigns, to his and their own proper use, benefit, and behoof forever:

Provided always, and these presents are upon this express condition, that if the said parties of the first part, their heirs, executors, or administrators, shall well and truly pay unto the said party of the second part, his executors, administrators, or assigns, the said sum of money mentioned in the condition of the said bond or obligation, and the interest thereon at the time and in the manner mentioned in the said condition, according to the true intent and meaning thereof, that then these presents and the estate hereby granted shall cease, determine, and be void.

And the said parties of the first part, each for himself, his heirs, executors, and administrators, doth covenant and agree to pay unto the said party of the second part, his executors, administrators, or assigns, the said sum of money and interest as above mentioned and expressed in the condition of the said bond; and if default shall be made in the payment of the said sum of money above mentioned, or the interest that

may grow due thereon, or of any part thereof, that then and from thenceforth it shall be lawful for the said party of the second part, his executors, administrators, and assigns, to enter into and upon all and singular the premises hereby granted, or intended so to be, and to sell and dispose of the same, and all benefit and equity of redemption of the said parties of the first part, their heirs, executors, administrators, or assigns therein, at public auction, according to the act in such case made and provided; and, as the attorney of the said parties of the first part, for that purpose by these presents duly authorized, constituted, and appointed, to make and deliver to the purchaser or purchasers thereof a good and sufficient deed or deeds of conveyance in the law for the same, in fee-simple, and out of the money arising from such sale to retain the principal and interest which shall then be due on
10 the said bond or obligation, together with the costs and charges of advertisement and sale of the said premises, rendering the overplus of the purchase-money (if any there shall be) unto the said parties of the first part, their heirs, executors, administrators, or assigns, which sale, so to be made, shall forever be a perpetual bar, both in law and equity, against the said parties of the first part, their heirs and assigns, and all other persons claiming or to claim the premises, or any part thereof, by, from, or under them, or either of them.

In witness whereof the parties to these presents have hereunto set their hands and seals the day and year first above written.

EDWARD CHAPPEL, SR. [SEAL.]
EDWARD CHAPPEL, JR. [SEAL.]
JOHN N. CHAPPELL. [SEAL.]

Sealed and delivered in the presence of—the words "or in payment of the principal, as the same is specified in said bond to be paid," and also the words "of the party of the second part hereto" interlined before signing—

JOSEPH H. BARRY.
FRANK BOSTWICK.

[$5 50 U. S. stamp cancelled.]

STATE OF ILLINOIS, *County of Jo Daviess, ss:*

On this 26th day of May, in the year one thousand eight hundred and sixty-five, before me, the subscriber, appeared Edward Chappel, sen'r, Edward Chappel, jr., and John Chappel, to me personally known to be the same persons described in and who executed the within instrument, and they respectively acknowledged that they executed the same.

Witness my hand and seal this 25th day of May, A. D. 1865.

[SEAL.] JOSEPH H. BARRY, *J. P.*

STATE OF ILLINOIS, *Jo Daviess Co., ss:*

I, Richard Seal, clerk of the county court in & for said county, do hereby certify that Joseph H. Barry, esq., whose name appears subscribed to the foregoing and annexed instrument, is now, and was at the time of subscribing the same, an acting justice of the peace
11 in & for said county, regularly commissioned and qualified, & that as such justice full faith and credit is due to all his official acts, and that I am well acquainted with his handwriting, & verily believe his name subscribed thereto to be genuine; and further, that the annexed said instrument is executed in due form according to the laws of the State of Illinois.

In witness whereof I have hereunto set my hand and affixed the seal of said court this 27th day of May, 1865.

Attest: RICHARD SEAL, *Clerk.*

REGISTER'S OFFICE, *Lafayette Co., Wis.:*

Received, for record, May 30th, A. D. 1865, at 9 o'clock a. m., and recorded in vol. 11 of mortgages, page 428, 429, 430, & 431.

F. SCOTT, *Register.*

STATE OF NEW YORK,
City and County of New York, ss:

I, Walter H. Calhoun, a notary public in and for said city and county of New York, do hereby certify that I have compared the foregoing instrument with the original this day exhibited to me, and that the same is a true copy thereof and of the whole thereof.

In witness whereof I have hereunto set my hand and affixed my official notarial seal this ninth day of January, A. D. 1868.

[SEAL.] WALTER H. CALHOUN,
Notary Public City and County of New York.

"EXHIBIT B."

Bond.

Exhibit "B" of bill, filed therewith.

Know all men by these presents that we, Edward Chappel, senior, Edward Chappel, junior, and John Chappel, of Lafayette County, State of Wisconsin, are held and firmly bound unto Frederic Bronson, of the city, county, and State of New York, executor of the last will and testament of Arthur Bronson, late of said city, deceased, in the sum of ten thousand dollars, lawful money of the United States of America, to be paid to the said Frederic Bronson, executor, &c., as aforesaid, his executors, administrators, or assigns; for which payment, well and
12 truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly, severally, and firmly by these presents, sealed with our seals, dated the thirteenth day of February, one thousand eight hundred and sixty-five.

The condition of the above obligation is such, that if the above-bounden Edward Chappel, senior, Edward Chappel, junior, and John Chappel, their heirs, executors, or administrators, shall well and truly pay, or cause to be paid, unto the above-named Frederic Bronson, executor, &c., in the city of New York aforesaid, his executors, administrators, or assigns, the just and full sum of five thousand three hundred & forty-three $\frac{60}{100}$, ($5,343 60,) as follows, viz, seven hundred & eighty-one $\frac{20}{100}$ dollars, ($781 20,) on 30th November, 1865, and the remaining sum of four thousand five hundred and sixty-two $\frac{40}{100}$ dollars, ($4,562 40,) in seven equal annual payments of six hundred and fifty-one $\frac{77}{100}$ dollars, ($651 77,) from the 13th February, 1865, the first of which annual payments to be on the 13th February, 1866, and the last of said annual payments to be on the thirteenth day of February, 1872, which will be in the year one thousand eight hundred and seventy-two, and the interest thereon on above several sums of money, to be computed from the day of the date hereof, at and after the rate of seven per cent. per annum, and to be paid in the city of New York at the dates above specified for said payments, then the above obligation to be void; else to remain in full force and virtue

And it is hereby expressly agreed that, should any default be made in the payment of the said interest, or of any part thereof in the payment of the principal, as the same is above specified to be paid, on any day whereon the same is made payable as above expressed, and should the same remain unpaid and in arrear for the space of thirty days, then and from thenceforth the aforesaid principal sum of five thousand three hundred and forty-three $\frac{60}{100}$ dollars, ($5,343 60,) *dollars*, with all arrearage of interest thereon, shall, at the option of the said Frederic
13 Bronson, executor, &c., his executors or other legal representatives, become and be due and payable immediately thereafter, although the period above limited for the payment thereof may not then have expired, anything hereinbefore contained to the contrary thereof in any wise notwithstanding.

EDWARD CHAPPEL, SR. [SEAL.]
EDWARD CHAPPEL, JR. [SEAL.]
JOHN N. CHAPPEL. [SEAL.]

Sealed and delivered in presence of—the words "or in the payment of the principal, as the same is above specified to be paid," and also "on above several sums of money," interlined before signing—

JOSEPH H. BARRY.
FRANK BOSTWICK.

STATE OF NEW YORK,
City and County of New York, ss:

I, Walter H. Calhoun, a notary public in and for said city and county of New York, do hereby certify that I have compared the foregoing instrument with the original this day exhibited to me, and that the same is a true copy thereof, and of the whole thereof.

In witness whereof I have hereunto set my hand and affixed my official notarial seal this ninth day of January, A. D. 1868.

[SEAL.] WALTER H. CALHOUN,
Notary Public City and County of New York.

Whereupon a subpœna issued as follows:

Subpœna.

UNITED STATES OF AMERICA,
District of Wisconsin, ss:

[SEAL.] The President of the United States of America to Edward Choppel, senior, Edward Choppel, junior, and John Choppel, greeting:

You are hereby commanded that you personally appear before the judges of the circuit court of the United States of America for the district of Wisconsin, in our court of chancery in and for the district aforesaid, on the first Monday of April next ensuing, at Milwaukee, to answer
14 to a bill of complaint exhibited against you in our said court, by Frederic Bronson, executor of the last will & testament of Arthur Bronson, deceased; and to do further, and receive what our said court shall have considered in that behalf, and this you are not to omit, under the penalty which may ensue.

This process of subpœna is directed to the marshal of this district, who is hereby commanded to serve the same upon the said Edward Choppel, senior, Edward Choppel, junior, and John Choppel, if to be found in his district, and due return thereof make.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at the city of Milwaukee, in the said district, this eighteenth day of February, in the year of our Lord one thousand eight hundred and sixty-eight, and of our independence the 92d.

EDWARD KURTZ, *Clerk.*

A. L. CUMMINGS, *Solicitor.*

It is ordered by our said court that the said Edward Choppel, senior, Edward Choppel, junior, and John Choppel, the defendants aforesaid, do enter their appearance in this suit in the clerk's office, on or before the day and time at which this subpœna is returnable, as aforesaid; otherwise the bill filed may be taken as confessed.

Return.

Subpœna returned:

"I do hereby certify and return that I personally served the within subpœna on Edward Chappel, sr., by reading the original to him, and by leaving a copy thereof with him at his place of residence, in the town of Elk Grove, in the county of Lafayette, and State of Wisconsin, on the 27th day of February, A. D. 1868, at 3½ o'clock p. m. of said day. I further certify that I was unable to find Edward Choppel, jr., by reason of his absence and the absence of his family from their place of residence in the town of Elk Grove, county of Lafayette, and State of Wisconsin, on the 27th day of February, A. D. 1868, which place I visited twice on said day, viz, at 2.45 p. m, and 4. 15 p. m.; and further, that I made diligent inquiry to ascertain the whereabouts
15 of said Edward Choppel, jr., and could learn nothing of him. I further certify that I served a copy of the within subpœna on John Choppel at 3.30 p. m. of February 28th, A. D. 1868, by leaving the same at his place of residence in the town of Elk Grove, county of Lafayette, and State of Wisconsin, in the hands of Edward Choppel, jr., and informing him of the contents of the same.

"CASSIUS FAIRCHILD, *Marshal*,
"By J. E. DUNCAN,
"*Deputy U. S. Marshal for Lafayette County, Wisconsin.*

"Fees, $20 70."

APRIL 3, 1868.—This day came the defendants by their solicitor, Mr. Cothren, and filed their answer as follows:

Answer.

Circuit court of the United States for the district of Wisconsin.

EDWARD CHAPPEL, SENIOR, EDWARD CHAPPEL, junior, & John N. Chappel, *ads.* / FREDERICK BRONSON, EXECUTOR OF THE LAST will and testament of Arthur Bronson, deceased. } In chancery.

The joint and several answer of Edward Chappel, senior, Edward Chappel, junior, and John N. Chappel, defendants, to the bill of complaint of Frederick Bronson, executor, &c.

These defendants, now and at all times hereafter, saving and reserv-

ing to themselves all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainant's said bill of complaint contained, for answer thereto, or to so much or to such parts thereof as these defendants are advised is material for them to make answer unto, they answer and say that they admit that, on the thirteenth day of February, A. D. 1865, they executed a certain indenture of mortgage of that date, whereby they pledged certain lands therein described for the payment of certain monies due from them to the complainant as a part of the purchase-money of said lands, to wit, the sum of five thousand three hundred and forty-three $\frac{60}{100}$ dollars due by their certain bond.

16 These defendants further admit that, by the terms of the conditions of said bond, the whole sum above mentioned was to be paid in the manner and at the times in complainants' bill of complaint stated, except as hereinafter stated.

These defendants, further answering, admit that, by the terms of said contract, there was due on the 30th of November, A. D. 1865, the sum of eight hundred and seventy-five $\frac{36}{100}$ dollars, but they deny the allegation of said complainant in his said complaint, that the said sum so becoming due was wholly unpaid; and they deny that there became due on that day the sum of one thousand and seventy-seven $\frac{31}{100}$ dollars.

These defendants, further answering, admit that, by the terms of said contract, there was due on the 13th of February, A. D. 1866, the sum of nine hundred and seventy-eight $\frac{45}{100}$ dollars, but they deny the allegation in complainants' said bill of complaint contained, that the sum of nine hundred and eighteen $\frac{29}{100}$ dollars was wholly unpaid.

And these defendants, further answering, say that they admit that, on the 13th of February, A. D. 1867, there was due by said contract the sum of nine hundred and twenty-five $\frac{51}{100}$ dollars, but they deny the allegation in complainants' complaint contained, that the said last-mentioned sum was wholly unpaid.

These defendants, further answering, deny the allegation in complainants' complaint contained, "that the only payment made by said defendants to complainant on said contract was the sum of nine hundred and twenty-seven $\frac{13}{100}$ dollars, rec'd by orator on the 23rd day of February, A. D. 1867."

These defendants, further answering, say that they deny the allegation in complainant's bill of complaint contained, that, by reason of the failure of defendants to pay the several payments specified in said bond, according to the tenor and effect thereof, said principal sum, and the whole thereof, or any part thereof, and the interest thereon, became due and payable at the option of complainant; and they deny that

17 complainant has the right to treat the same as wholly due, and to foreclose the said mortgage accordingly.

And these defendants, further answering, show that, according to the terms of said bond & mortgage, they were to have thirty days longer than the time in the complaint, and in this answer hereinbefore above specified, to make each of the said payments; and they state and aver that on the 4th day of December, A. D. 1865, they paid to complainant, on said contract, the sum of eight hundred and seventy-five $\frac{36}{100}$ dollars, being all that was then due thereon for principal and interest, which said sum was received and receipted for by W'm C. Bostwick, the agent of said complainant.

They further show that on the 28th day of February, A. D. 1866, they paid to complainant, on and in pursuance of said contract, the sum of

nine hundred and eighty dollars, being the full amount then due thereon for principal and interest, which was received and receipted for by Wm C. Bostwick, complainant's agent.

And defendants, further answering, say that on the 18th day of February, A. D. 1867, they paid to complainant, by draft, the sum of nine hundred and twenty-seven $\frac{13}{100}$ dollars, the receipt of which the said complainant acknowledged by letter, which was all that was then due on said contract for principal and interest.

And they, further answering, show that on the 8th day of February, A. D. 1868, they remitted to said complainant, by draft, the sum of eight hundred and seventy-eight $\frac{82}{100}$ dollars, being the whole amount of principal and interest then due on said contract, which said sum complainant returned by mail to defendants, refusing to credit the same on the said contract, on the alleged ground solely that there was a larger sum due him on said contract. And defendants now bring the said sum last above mentioned into court, and tender the same to complainant, and asks that it be directed & decreed by this court to be endorsed as payment in full up to the date aforesaid, to wit, February 8th, A. D. 1868.

18 And these defendants, further answering, say that they have in all things complied with the terms of said contract, and are at all times ready to comply with the terms of said contract.

These defendants deny all combination & confederacy, and pray that by the judgment and decree of this court they may be declared to have paid the said several sums above specified, and that they have fully complied with the terms of their contract up to the time of exhibiting the bill of complaint herein.

M. M. COTHREN,
Sol. for Defendant.

APRIL 30, 1868.—This day come the complainant by his solicitor, and filed his replication as follows:

Replication.

Circuit court of the United States for the district of Wisconsin.

FREDERIC BRONSON, EX'R, &C.,
vs.
EDWARD CHAPPEL, SENIOR, EDWARD CHAPPEL, JUNIOR, & JOHN N. CHAPPEL. } In chancery.

The replication of Frederic Bronson, ex'r, &c., to the joint & several answer of said defendants, heretofore filed, shows as follows:

That in so far as said answer admits the allegations of the bill of complaint herein filed, the same is admitted to be true; but in so far as said answer, or any part thereof, denies the allegations of said bill, or sets up new matter in avoidance thereof, or of the relief sought, the same is wholly untrue & should not be heard in bar of the relief sought, or against the prayer of said bill.

And the said repliant reaffirms the truth of the allegations of said bill, & prays as heretofore in said bill.

A. L. CUMMINGS,
Sol'r & Att'y for Compl't, Frederic Bronson, Ex'r, &c.

19 *Docket entries.*

JULY 24, 1868.—This day came the complainant, by his solicitor, and entered in the order and rule book an order for a commission to issue to Edwin F. Corey, jr., 54 Wall st., New York, to take the testimony of Walter H. Calhoun, & filed interrogatories to be annexed.

JULY 27, 1868.—Depositions received from post office and filed.

JULY 28, 1868.—Commission issued to Edwin F. Corey, jr., New York.

AUGUST 6, 1868.—Depositions received from post office and filed.

AUGUST 11, 1868.—On application of defendants by their counsel, Mr. Cothren, and cause shown, it is ordered by the district judge that the time for taking testimony on both sides be extended until the first day of December next.

AUGUST 28, 1868.—Depositions received from post office and filed.

SEPTEMBER 17, 1868.—Depositions received from post office and filed.

SEPTEMBER 25, 1868.—Depositions received from post office and filed.

OCTOBER 5, 1868.—Stipulation that depositions may be opened this day, filed.

And afterwards, to wit, at a special session of said court, begun and held at the city of Milwaukee, on the first Monday of February, A. D. 1869, and on the fourth day thereof, to wit, on the first day of March, A. D. 1869—present, the Honorable Andrew G. Miller, district judge, presiding—the following proceedings were had, to wit:

Suggestion of death of complainant, &c.

FREDERIC BRONSON, EXECUTOR OF THE LAST will & testament of Arthur Bronson, deceased, *vs.* EDWARD CHAPPEL, SENIOR, EDWARD CHAPPEL, junior, & John Chappel.	In equity.

This day came Mr. Cummings, counsel for the complainant, and made suggestion of the death of Frederic Bronson, the complainant.

And on his motion it is ordered by the court that this suit be, and hereby is, revived, and to be prosecuted in the name of John J.
20 Townsend, executor of said Frederic Bronson, deceased, who was executor of Arthur Bronson, deceased.

And on motion of defendants' counsel, it is ordered by the court that the time for taking testimony be extended for both parties until the first day of June next.

Which motion to revive, &c., is as follows:

Motion to revive, &c.

United States circuit court, district of Wisconsin, ss.

FREDERIC BRONSON, EX'R, &C., *vs.* EDWARD CHAPPEL ET AL.	In case of bill for foreclosure of mortgage.

In the above-entitled cause comes A. L. Cummings, solicitor of record of said plaintiff, & suggests the death of the said Frederic Bronson,

above named as plaintiff, & says that he died in Europe on the 1st of November, A. D. 1868, and that John J. Townsend, of New York, has taken letters-testamentary on his estate, and has, on petition of Ann Eliza Bronson, widow of Arthur Bronson, deceased, been appointed by the supreme court of the State of New York, trustee of the estate of Arthur Bronson, dec'd, remaining unadministered, as will more fully appear by a certified copy of the order of said court herewith filed & made a part of this motion.

The premises considered, the court is hereby moved to appoint the said John J. Townsend, who appears by said solicitor in this behalf, in place of the said Frederic Bronson, dec'd, to represent said estate of Arthur Bronson, in this behalf in this court, & that the suit be revived in the name of the said John J. Townsend, as trustee under said will, & that such proceedings may then be had therein in his name as might otherwise in the name of the said Frederic Bronson, deceased.

And your petitioner, John J. Townsend, trustee, &c., who appears by his solicitor, will ever pray, &c.

A. L. CUMMINGS,
Solicitor, &c.

Filed March 1, 1869.

21 And said certified copy of the order of the supreme court of the State of New York, filed with said motion and made a part thereof, is as follows:

Certified copy petition of Ann Eliza Bronson to sup. ct. of N. Y., & order of said court.

[SEAL.] The people of the State of New York, by the grace of God free and independent, to all to whom these presents shall come, or may concern, greeting:

Know ye that we, having examined the records and files in the office of the clerk of the county of New York, and clerk of the supreme court of said State for said county, do find a certain petition & order there remaining in the words and figures following, to wit:

"IN THE MATTER OF THE PETITION OF ANN Eliza Bronson, widow of Arthur Bronson, deceased. } Supreme court.

"To the supreme court:

"The petition of Ann Eliza Bronson, widow of Arthur Bronson, deceased, respectfully shows that Arthur Bronson, late of the city, county, and State of New Hork, departed this life on the seventeenth day of November, A. D. 1844, leaving his last will and testament, bearing date the twenty-ninth day of October, A. D. 1844, which was duly proved as a will of real and personal estate, in the office of surrogate of the city and county of New York, to which will, or the record thereof remaining in said office, your petitioner refers; that by said will the said testator, after making certain dispositions of a portion of his estate, did give, devise, and bequeath all the rest, residue, and remainder of his property and estate, both real and personal, unto his executors, or to such of them as should qualify to and assume the execution of his will, and to the survivor of them, and to the heirs, executors, administrators, and assigns of such survivor, with certain powers in said will fully expressed, in trust to hold, invest, rent, and improve the same, and to col-

lect and receive the rents, interest, dividends, or other income thereof, and to pay over the same, when and as the same shall be by them received, to your petitioner for and during the term of her natural life,
22 provided she shall so long remain his widow; at the death or remarriage of your petitioner, the same is given to his children then living, including the issue then living of such as may then be deceased; and the testator in his will nominated and appointed his brother, Frederic Bronson, and his friend, Francis Griffin, to be the executors of his will, and trustees thereunder for the purposes therein specified; that the said Francis Griffin never qualified nor assumed to act, and the said Frederic Bronson acted as sole trustee until the first day of November, A. D. 1868, when he departed this life; that the said testator left only three children, and they are still surviving—Arthur, Theodore, and Catharine R., wife of John J. Townsend—all of whom have issue now living.

"And your petitioner further shows that, except certain advances which have been made to the children, the trusts of the will remain unexecuted; that the interests of all the persons interested require the immediate appointment of a new trustee; that the said John J. Townsend is well qualified to discharge the duties of the trust; that he is the only member of the family in a position to discharge the same, and she believes that his appointment will promote the interest of all who are concerned, and will be satisfactory to all. She thereupon prays that the said John J. Townsend may, by an order of this court, be appointed trustee, under the will of the said Arthur Bronson, to execute all the trusts therein expressed which remain unexecuted, with all the powers and duties of the original trustees and the survivor of them.

"ANN ELIZA BRONSON.

"CITY AND COUNTY OF NEW YORK, *ss:*

"Ann Eliza Bronson, being duly sworn, says that she has read the foregoing petition by her subscribed, and knows the contents thereof, and that the same is true of her own knowledge, except as to the matters which are therein stated on information and belief, and as to those matters she believes it to be true.

"ANN ELIZA BRONSON.

"Sworn to before me this twelfth day of November, 1868.

"WALTER H. CALHOUN,
"*Notary Public, City and County of New York.*

23 "I also devise and request that the said John J. Townsend be appointed such trustee without security.

"New York, November 13th, 1868.

"ANN ELIZA BRONSON.

"STATE OF NEW YORK,
"*City and County of New York, ss:*

"On the thirteenth day of November, eighteen hundred and sixty-eight, before me personally came Ann Eliza Bronson, who is personally known to me, and also to me known to be the same person who signed the foregoing petition and request, and acknowledged that she signed the same for the purpose therein stated.

"WALTER H. CALHOUN,
"*Notary Public, City and County of New York.*

"CITY AND COUNTY OF NEW YORK, *ss:*

"Elias L. Smith, being duly sworn, says that he is well acquainted with the estate of Arthur Bronson, deceased, and has for more than six years had the supervision thereof under the direction of Frederic Bronson, deceased.

"Deponent is also the agent of the executrix of the will of Francis Griffin, deceased, and has been for more than sixteen years. Deponent says that it is necessary that an appointment should be immediately made to execute the trusts under the will of Arthur Bronson, deceased; that there is no person connected with the family in a position to execute the same except the said John J. Townsend, who is well qualified for that purpose, who was for many years consulted by the said Frederic Bronson in the management of the estate, and enjoyed his friendship and confidence, and was named an executor in his will.

"ELIAS L. SMITH.

"Sworn to before me this twelfth day of November, 1868.

"WALTER H. CALHOUN,
"*Notary Public, City and County of New York.*"

Petition endorsed: "Filed Nov. 13, 1868."

"At a special term of the supreme court held at the city of New York, on the thirteenth day of November, A. D. 1868:

"Present, Hon. Josiah Sutherland, justice.

24 "*Order appointing J. J. Townsend trustee, &c.*

"IN THE MATTER OF THE PETITION OF ANN Eliza Bronson, widow of Arthur Bronson, deceased.

"On reading and filing the petition of Ann Eliza Bronson, widow of Arthur Bronson, deceased, and the affidavit of Elias L. Smith—

"It is ordered that John J. Townsend, of the city, county, and State of New York, be, and he is hereby, appointed trustee under the last will and testament of Arthur Bronson, deceased, to execute all the trusts therein expressed, with all the powers and duties of the original trustees.

"And he is hereby designated and appointed the successor of Frederic Bronson, deceased, surviving trustee under the said will, and directed to execute and perform all the trusts under said will which remain unexecuted, subject in all things to the order and direction of this court, and with leave to apply, from time to time, at the foot of this order for specific directions in the discharge of his duties."

All which we have caused by these presents to be exemplified, and the seal of the said supreme court to be hereunto affixed.

Witness Daniel P. Ingraham, justice at the city of New York, the 5th day of January, in the year of our Lord one thousand eight hundred and sixty-nine, and of our independence the ninety-third.

[SEAL.] CHA'S E. LOEW, *Clerk.*

I, Daniel P. Ingraham, presiding justice of the supreme court of the State of New York for the city and county of New York, do hereby

certify that Charles E. Loew, whose name is subscribed to the preceding exemplification, is the clerk of the said county of New York, and clerk of said supreme court for said county, duly elected and sworn, and that full faith and credit are due to his official acts.

I further certify that the seal affixed to the exemplification is the seal of our said supreme court, and that the attestation thereof is in due form.

Dated New York, January 5th, 1869.

25 D. P. INGRAHAM, *Justice.*

STATE OF NEW YORK,
City and County of New York, ss:

I, Charles E. Loew, clerk of the supreme court of said State in and for the city and county of New York, do hereby certify that Daniel P. Ingraham, whose name is subscribed to the preceding certificate, is presiding justice of the supreme court of said State in and for the city and county of New York, duly elected and sworn, and that the signature of said justice to said certificate is genuine.

In testimony whereof I have hereto set my hand and affixed the seal of said court this 5th day of Jan'y, 1869.

[SEAL.] CHA'S E. LOEW, *Clerk.*

[5-ct. rev. stamp cancelled.]

{ NEW YORK } The people of the State of New York to all to whom
{ STATE SEAL. } these presents shall come or may concern, send greeting:

Know ye, that we, having inspected the records of our surrogate's court in and for the county of New York, do find that, on the 18th day of November, in the year one thousand eight hundred and sixty-eight, by said court, letters-testamentary on the goods, chattels, and credits which were of Frederic Bronson, late of the city of New York, deceased, were granted and committed unto John J. Townsend, of said city; and that it does not appear by said records that said letters have been revoked.

In testimony whereof we have caused the seal of the office of our said surrogate to be hereunto affixed.

Witness Gideon J. Tucker, surrogate of our said county, at the city of New York, the 16th day of December, in the year of our Lord one thousand eight hundred and sixty-eight.

[SEAL.] W'M B. ARTHUR,
Clerk to the Surrogate's Court.

[5-ct. rev. stamp cancelled.]

Filed March 1, 1869.

JUNE 2, 1869.—This day came the defendants by their counsel,
26 and on their motion it is ordered by the court that the time for taking testimony on both sides be extended until the first day of August next.

AUGUST 3, 1869.—This day came the complainant by his counsel, and moved the court to suppress portions of the testimony taken herein, for reasons filed as follows:

Motion to suppress testimony.

Circuit court of the United States for the district of Wisconsin.

JOHN J. TOWNSEND, TRUSTEE UNDER THE last will & testament of Arthur Bronson, dec'd,
vs.
EDWARD CHAPPEL, SENIOR, EDWARD CHAPpel, junior, & John Chappel.
} In chancery.

And now comes the said complainant by A. L. Cummings, his solicitor, & moves the court for the suppression of the following, taken as testimony in said cause, to wit:

A part of the deposition of W'm C. Bostwick, esq., to wit:

That part of answer to 3d direct interrogatory commencing with the sentence, "A subsequent payment was made to me by the said defendants upon said purchase, according to the condition thereof, the amount of which said second payment I do not now recollect;" thence on continuously to & including the sentence, "I advertised myself through the country as the agent of the Bronson lands, which advertising was continued for a period of 12 or 14 years."

Also all that portion of direct int'y 3d, & the answer thereto, relating to the capacity in which said witness supposed he was acting at the time of the Chappel contract.

The exceptions to above are to the whole portions included, & separately to each portion & particular thereof, for the following reasons in brief, viz: Immateriality, irrelevancy, an attempt to change or vary the written contract by parol proof, an attempt to prove the contents of letters & printed advertisements without producing them or accounting for their absence; all which objections apply with greater or
27 less force to the respective portions of the deposition above excepted to.

Also to the following portions of the deposition of Edward Chappel, senior, to wit:

In answer to 4th direct int'y, the following: "He acted as the agent of Frederic Bronson, the complainant in this action."

Also all the remainder of said answer except that which immediately relates to the written contract & payments to Frederic Bronson himself, according to the terms of the contract.

All statements in regard to contents of letters or other papers are especially excepted to in said answer.

Also all statements of Bostwick tending to enlarge, restrict, alter, or annul the terms of said written contract are especially excepted to in said answer.

Also all statements in regard to contents of receipts, or receipts themselves, from any person other than Frederic Bronson, for any supposed payments under said contract.

Also all of 6th int'y & answer, all of 7th int'y & answer, also all of 8th int'y & answer, are excepted to, for the reasons above assigned in excepting to Bostwick's deposition.

Also that part or those parts of the deposition of Edward Chappel, junior, to wit: Int'y 3rd, as leading & otherwise objectionable in seeking to prove as a question of fact a conclusion of law from the facts; also the answer to the same int'y, except that part relating to payments to Frederic Bronson in his lifetime, for the same reasons stated as grounds of exception to Bostwick's deposition, said reasons applying, as to said

deposition separately, to each portion of said deposition respectively; also, in addition to other reasons, that of hearsay, as applicable to much of said answer.

Also to the following portions of the deposition of Frank Bostwick, son of W'm C. Bostwick, to wit: That part of answer to int'y 3d, direct, which states his understanding & supposition as to the question of agency, for the reason it is not evidence, and all said answer as irrelevant to the issue; also int'y 4th, as leading, & the answer, because of being a direct response to a leading question almost in the words of the question, & also as based on supposition; int'y 5 & answer, for the
28 same reason just stated, & also as attempting to prove the contents of printed advertisements without producing them or showing their loss; int'y 6th & answer, for same reasons, & also all the same for reasons stated in exception to Bostwick's deposition.

Also to exclude all letters of Bronson offered under stipulation, for the following reasons: The letters before the date of the contract relate to an entirely different state of things from the one at bar; this being the only deed with bond & mortgage to secure purchase-money spoken of by any of the witnesses, the ones relating to the contract show no more than the contract, or if they show a different contract, should not be heard to vary the contract admitted by defendants to have been made by them, as laid in the bill; none of the letters since the contract are admissible, unless they shew subsequent waiver of conditions or terms, or modification of written contract or payments under said contract to Frederic Bronson; the ones relating to payments to him are unobjectionable; so would be any from Bronson to Bostwick directly authorizing him to collect money from defendants under the contract stated in the pleadings, if any such could be shewn; but these do not show or tend to show such authority.

As to any letters except Bronson's, we think they are clearly inadmissible, & move their exclusion.

A. L. CUMMINGS,
Sol'r for said Complainant.

In the above-entitled cause the complainant, by his solicitor aforesaid, opposes the granting of any further order extending time for taking testimony on application of defendants, three such orders having been already granted.

A. L. CUMMINGS,
Sol'r for Complainant.

And afterwards, to wit, on the 20th day of August, A. D. 1869, the complainant, by his solicitor, entered in the order & rule book an order setting said cause down for hearing, according to the rules & practice of said court, as follows:

29 *Cause set down for hearing.*

U. S. circuit court, dist. of Wisconsin.

JOHN J. TOWNSEND, EXECUTOR OF FREDERIC Bronson, dec'd, who was executor of Arthur Bronson, dec'd,
vs.
EDWARD CHAPPEL, SENIOR, EDWARD CHAPpel, junior, & John Chappel.
} In equity.

AUGUST 20TH, 1869.

On motion of A. L. Cummings, complainant's solicitor, it is ordered

that this cause be set down for hearing at the next term of this court, commencing on the second Monday of September next.

A. L. CUMMINGS,
Compl't's Sol'r.

Order extending time to take testimony.

SEPTEMBER 6, 1869.—On motion of defendants by their counsel, ordered that the time for taking testimony in this case be extended for both sides until the 20th day of this month.

SEPTEMBER 22, 1869.—Depositions received from the post office and filed.

SEPTEMBER 23, 1869, (being the 10th day of the Sept. term of said court.)—This day came the complainant by his counsel and moved the court to set aside the order of September 6th, extending the time to take testimony, and to exclude the depositions of Edward Chappel, senior, Edward Chappel, junior, Lewis Benedict, and John K. D. Seelhorst, taken since then, for reasons filed.

Motion to set aside order of Sept. 6th & exclude test.

JOHN J. TOWNSEND, EX'R OF FREDERIC BRONSON, dec'd, who was ex'r of Arthur Bronson, dec'd,
vs.
EDWARD CHAPPEL, SENIOR, EDWARD CHAPPEL, junior, & John Chappel.
} In chancery.

And the said complainant, by A. L. Cummings, his solicitor, comes & moves the court to exclude the depositions of Edward Chappel, senior, & Edward Chappel, junior, Louis Benedict, John K. De Seelhorst, & John Benet, & assigns the reasons following:

30 Said depositions were taken under & by virtue of an order of extension granted after the cause was set down for hearing & at the term to which the cause was set for hearing, which order was granted without cause shewn, on the mere application of defendants' attorney, & without the attention of the court being called to the fact of the cause being set for hearing to said term.

Complainant by his solicitor aforesaid therefore moves that the order of September 6th, 1869, extending time for taking testimony, be set aside as improperly granted at the time & in the stage of proceeding reached in the cause, & the depositions be excluded as improperly taken.

Complainant by his solicitor aforesaid objects to the depositions of Edward Chappel, sr., & Edward Chappel, jr., because their testimony has already been taken in this cause, & because of the same reasons objected against their former depositions, so far as applicable to the depositions as retaken. Also specifies 6th to 10th int'ys & each of them & answers thereto in Edward Chappel, sr's, dep'n, & 4th int. & answer, & 5th int. & answer, of Edward Chappel, jr.

And said complainant by his solicitor aforesaid moves to exclude the remaining depositions above named for the reasons adduced in former motion as to letters, &c., & the additional reason that they relate to entirely different contrac s made with different parties by Mr. Bronson through Bostwick & cannot apply to this case, & because that the agency

of Bostwick, if proved, would not be admissible to change or vary the written contract in this case.

A. L. CUMMINGS,
Sol'r for Complainant.

And said complainant by his solicitor aforesaid moves to exclude the last part of the answer of W'm C. Bostwick to cross-interrogatory 13, because the same is irresponsive to the question, & the question has been fully answered without the last clause, said last clause having reference to other dealings with Bronson.

A. L. CUMMINGS,
Sol. for Complainant.

31 *Hearing.*

SEPTEMBER 25, 1869, (being the 12th day of Sept. term of court.)—This day came the parties by their counsel, and this cause came on to be heard upon the pleadings and proofs, and was argued by Mr. Cummings for the complainant, and by Mr. Cothren for the defendants; and the hearing not being concluded, the same was adjourned until Monday morning next.

Hearing.

SEPTEMBER 27, 1869, (being the 13th day of said term.)—This day came the parties by their counsel, and this cause was further argued by Mr. Lakin for the defendants, and by Messrs. Mattocks and Cummings for the complainant; and the hearing being concluded, the court held same under advisement.

And on said hearing the following testimony was read in evidence:

COMPLAINANT'S TESTIMONY.

Deposition of Frederic Bronson.

In the circuit court of the United States for the district of Wisconsin, ss:

FREDERIC BRONSON, EXECUTOR OF THE LAST will and testament of Arthur Bronson, deceased, *vs.* EDWARD CHAPPEL, SR., EDWARD CHAPPEL, JR., & John Chappel.	In equity.—Bill for foreclosure of mortgage.

The deposition of Frederic Bronson taken "de bene esse" before me, Edwin F. Corey, jr., a notary public for the State of New York, duly commissioned and sworn, dwelling in the city of New York, on this seventh day of July, A. D. 1868, at my office, in the city of New York, to be used on behalf of the plaintiff at the trial of the above-named cause for the reasons as set forth in the closing certificate hereto.

The said FREDERIC BRONSON, having been first duly sworn to testify the truth, the whole truth, and nothing but the truth, doth depose and say as follows in answer to the several interrogatories:

32 Interrogatory first. Are you the complainant in this suit; and, if so, in what capacity, representative or otherwise?

Answer. I am the complainant in the above-entitled suit as the executor of the last will and testament of Arthur Bronson, late of the city of New York, deceased.

Interrogatory second. Will you state what, if anything, you know of any supposed authority in William C. Bostwick, late of Galena, Ill's, to act as agent or attorney of yourself as executor as aforesaid, or to represent the estate of Arthur Bronson, deceased, in any capacity, from Jan'y 1st, 1860, to March 31st, 1866, & especially in the sale of the lands described in the mortgage sought to be foreclosed in this suit? State fully.

Answer. W'm C. Bostwick, late of Galena, Illinois, had no authority, written or verbal, to act as my agent individually, or as the agent of myself as executor of Arthur Bronson, or to represent the estate of Arthur Bronson in any capacity, (except as hereinafter stated,) at any time, especially from the 1st of January, 1860, to this date, as to the sale of any lands in Illinois, or Wisconsin, or elsewhere, or to make contracts therefor in my name. He was authorized only to receive and to communicate offers for the purchase of lands, and to communicate the same to me; and, as far as relates to the lands described in the mortgage and sought to be foreclosed in this suit, he sent to me the offer of the defendants to purchase the same, which I accepted, and sent to him a contract in duplicate executed by me, and authorized the said Bostwick, on the receipt of the cash payment and of the counterpart executed by said defendants, to deliver the said contract, and I gave an express written authority to receive the first or cash payment and to exchange the contracts, but in that written authority I expressly stated that all subsequent payments were to be made to me in the city of New York;

which written authority, appended to the said contract, was in
33 words and figures following:

"William C. Bostwick, esq., of Galena, is authorized to receive and receipt for the first payment on this contract; all subsequent payments to be made to F. Bronson, in the city of New York.

"New York, February 13th, 1865.

"F. BRONSON, *Ex.*"

A blank form of which contract is hereto annexed marked A. The said defendants expressed a preference to receive a deed for the said lands described in the mortgage sought to be foreclosed in this suit, and to execute then a bond and mortgage on the premises, to which I assented and authorized the said Bostwick to receive the cash payment, and to remit the same with the bond and mortgage to me.

Interrogatory third. Will you state whether or not the said Bostwick retained possession of the bond and mortgage in this suit at the time the first and second payments fell due thereon; if not, in whose possession were they, & who was authorized to receive the money on said bond & mortgage when said payments fell due?

Answer. The said Bostwick remitted the cash payment and the bond & mortgage in this suit to me by his letters of the 12th day of September, 1865, and that they have remained in my possession from that date to the present time, and have never been out of my office, in the city of New York; and I further answer that the said Bostwick was never authorized by verbal or written power to receive the money due on the first or second payments that fell due, or on any other payments stipulated for in said bond, & no one except myself & Elias L. Smith, of this city, was authorized to receive the money on said bond and mortgage.

Interrogatory fourth. Had Bostwick any authority to collect or receipt in your name or otherwise for you, or for the estate of Arthur Bronson, deceased, the money due from said defendants on their said bond & mortgage now in suit in this court? If you state that he had such authority, state also how he derived the same, by letter or by power of attorney or otherwise. State fully.

34 Answer. The said Bostwick had no authority to collect or receipt in my name, or otherwise for me, or for the estate of Arthur Bronson, deceased, the money due from said defendants on their said bond & mortgage now in suit in this court.

Interrogatory fifth. State whether or not you had notice by letters, printed advertisements, or handbills that the said Bostwick assumed to act as the agent or attorney of yourself, or the estate of Arthur Bronson, deceased, or hold himself out to the world as such agent. If you have any such letters, printed advertisements, or handbills, please append them as exhibits to this your deposition.

Answer. No. The only handbill I have ever seen is a printed list of lands, dated 27 February, 1860, which I have not in my possession. It contained a long list of lands, including lands that did not belong to me or to the estate of A. Bronson, and did not contain the lands described in the mortgage in suit, which lands belonged to the estate of Arthur Bronson, and the title was in me as said executor; that in the said printed list the said W'm C. Bostwick did not assume to act as my agent, or as the agent of myself as executor of Arthur Bronson, nor was it signed by said W'm C. Bostwick as agent.

Interrogatory sixth. If you have any letters or papers from the said Bostwick denying that he ever assumed to act as such agent or attorney for yourself or for the estate, please give their date & time when received by you, & append them as exhibits to this your deposition.

Answer. I have received from said W'm C. Bostwick his affidavit, dated February 25th, 1867, which was received by me February 25th, 1867, a copy of which is appended hereto, marked B. The original

35 is not in my possession, but will be produced at the time of trial, if required.

Interrogatory seventh. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully & at large in your answer.

Answer. No; except in explanation to my answer to the second interrogatory, I answer that W'm C. Bostwick was employed by me as counsel to foreclose a mortgage executed by Thomas C. Tegate to Arthur Bronson, ex'r, dated June 30th, 1841, and that was the only case in which the said Bostwick was employed as counsel for the executor of Arthur Bronson.

FREDERIC BRONSON.

UNITED STATES OF AMERICA,
State of New York, City & County of New York, ss:

By this public instrument be it known to all whom the same doth or may in any wise concern that I, Edward E. Corey, junior, a public notary in and for the State of New York, by letters-patent under the great seal of the said State, duly commissioned and sworn, dwelling in the city of New York, do hereby certify that, on the day of the date hereof, personally appeared before me, at my office, in the city of New York, Fre-

deric Bronson, to testify, and the truth to say on the part and behalf of the plaintiff in a certain suit as set forth in the caption hereof.

And I do further certify that the reason for taking the annexed and foregoing deposition is, and the fact is, that the witness named, sworn, and examined in the annexed deposition is material and necessary in the cause, in the caption of said deposition named, and resides
36 more than one hundred miles from the place of trial; that he is in infirm health, and, on that account, is about to sail for Europe on the eighth day of July next ensuing; and that it is impossible for him to appear at the trial.

And I do further certify that, on this seventh day of July, A. D. 1868, I was attended by the said Frederic Bronson, the witness named in the caption, and whose testimony is hereto annexed, who is of sound mind and lawful age, who was by me first carefully examined, cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, and the deposition was reduced to writing by me in the presence of the witness, and from his statements, and after carefully reading the same to said witness, he subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of forwarding the same with my own hand to the clerk of the court for which the same was taken.

I further certify that neither of the said defendants or their attornies reside within one hundred miles of the place of taking said deposition, and for that reason no notification of the time and place of taking said deposition was served on them or their attornies, and that neither of the said defendants or their attornies were present at the taking of said deposition.

And I further certify that I am not counsel nor attorney for either of the parties in the said deposition or caption named, nor in any way interested in the event of the cause named in said caption.

In testimony whereof I have subscribed my name and caused my notarial seal of office to be hereunto affixed the seventh day of July, in the year of our Lord one thousand eight hundred and sixty-eight in the 93d year of the independence of the United States.

[SEAL.] EDWIN F. COREY, JR.,
Notary Public, State of New York.

37 A

This contract, made the day of , in the year of our Lord one thousand eight hundred and , between , part of the first part, and part of second part, witnesseth as follows:

First. The said part of the first part, in consideration of the sum of dollars, to be paid to the said part of the first part, in the city of New York, and of the covenants to be performed by the said part of the second part, as hereinafter expressed, hereby agree to sell to the said part of the second part all

with the privileges and appurtenances thereunto belonging.

Second. The said part of the second part, in consideration of the covenants herein contained, on behalf of the said part of the first part, agree to purchase of the said part of the first part

the above-described land, and to pay for the same to the said part of the first part, or legal representatives, in the said city of New York, the said sum of dollars, lawful money of the United States, in the manner following, that is to say:

with interest, to be computed from the date of these presents, at and after the rate of per centum per annum on the whole sum that shall be, from time to time, unpaid, and to be paid annually; both principal and interest to be paid in the said city of New York. And, also, that will, so long as any part of the principal or interest of the said consideration money remains unpaid, well and faithfully, in due season, in each and every year, pay, or cause to be paid, all taxes and assessments, ordinary and extraordinary, that may, for any purpose whatever, be levied or assessed on said premises or on this contract, and that will not commit or suffer any other person to commit any waste or damage to the said lands or the appurtenances.

Third. The said part of the first part, further covenant and agree with the said part of the second part that upon the faithful performance, by the said part of the second part, of the covenants and agreements by to be performed, and upon the payment of the several sums of money above mentioned, and the interest thereon at the times and in the manner and at the place above mentioned, to the said part of the first, that thereupon the said part of the first part will well and faithfully execute and deliver a deed for the said premises, bearing even date herewith, with covenants against own acts only, of the above-described premises, with the appurtenances, and not otherwise.

Fourth. It is further mutually covenanted and agreed, by and between the said parties hereto, that the said part of the second part may immediately enter on the said land, and remain thereon and cultivate the same as long as shall fulfill and perform all the agreements hereinbefore mentioned on part, to be fulfilled and performed, and no longer; and that if shall, at any time hereafter, violate or neglect to fulfill any of said agreements, shall forfeit all right or claim under this contract, and be liable to the said part of the first part for damages, and shall also be liable to be removed from the said land in the same manner as is provided by law for the removal of a tenant that holds over after the expiration of the time specified in the lease. And it shall be lawful for the said part of the first part, at any time after the violation or non-fulfillment of any of the said agreements on the part of the said part of the second part, to sell and convey the said land, or any part thereof, to any other person whosoever; and the said part of the first part shall not be liable in any way, nor to any person, to refund any part of the money which may have received on this contract, nor for any damages on account of such sale. And it is hereby expressly understood and declared that time is and shall be deemed and taken as of the very essence of this contract, and that unless the same shall, in all respects, be complied with by the said part of the second part, at the respective times and in the manner above limited and declared, that the said part of the second part shall lose and be debarred from all rights, remedies, or actions, either in law or equity, upon or under this contract.

Fifth. This contract is hereby declared binding on the respective representatives of the parties hereto.

In witness whereof the parties to these presents have hereunto set their hands and seals the day and year first above written.

Sealed and delivered in the presence of—

"William C. Bostwick, esq., of Galena, is authorized to receive and receipt for the first payment on this contract; all subsequent payments to be made to F. Bronson in the city of New York.

"New York, February 13th, 1865.

"F. BRONSON, *Ex'r.*"

38 B.

Affidavit of William C. Bostwick.

Copy of W. C. Bostwick's affidavit, dated at N. Y., Feb'y 25th, 1867.

STATE OF NEW YORK,
City and County of New York, ss:

Personally appeared before me (Walter H. Calhoun, a notary public in and for said city and county) William C. Bostwick, late of Galena, in the State of Illinois, who, being by me duly sworn, doth depose and say that he has read the affidavit of his son, Frank Bostwick, dated January 18th, 1867, and that the same is incorrect; that the said Frank entirely misunderstood his (William C. Bostwick's) relations with Frederic Bronson, of the city of New York; that the agency of said Bostwick extended only to receiving offers for lands, and transmitting the same to said Bronson for his acceptance or rejection at his discretion, and that when contracts were accepted they were prepared by said Bronson, and executed by him, and forwarded to the said Bostwick for delivery to the parties purchasing; that said contracts always provided that all the purchase-money should be paid to said Bronson in the city of New York, except in some cases the said Bronson authorized by a supplemental article in writing that the first or cash payment provided in said contract might be paid to the said Bostwick for said Bronson, but that the said supplemental article also provided that all other payments except the first should be paid to him, the said Bronson, in the city of New York; that he was never the authorized agent of said Bronson to sell or lease his lands in Wisconsin or Illinois or elsewhere; that he was never authorized to collect and receive monies for said Bronson except as above excepted, and that all other payments made to him by the persons indebted to said Bronson were made to him not as the agent of the said Bronson, but as the agent of the persons paying him the money to remit the same to the said Bronson; that he was never authorized to sign the name of said Bronson as his attorney, and never had any written or verbal power from said Bronson to act for him in any way except as above stated; and that he never
39 said to any person that he had such power, and has never sold or contracted to sell any of his lands as such attorney.

(Signed) WM C. BOSTWICK.

Subscribed and sworn to before me in the city of New York this 25th day of February, A. D. 1867.

The words "William C. Bostwick" interlined (in the original affidavit) between the 6th & 7th lines from top of first page, and the word

"Bostwick" written on an erasure in the 9th line from top of 1st page, all before execution.

[SEAL.] WALTER H. CALHOUN,
Notary Public City & County of New York.

The deponent further says upon his oath that he has no doubt his son Frank fully believed in the fact stated in his affidavit, and testified under a misapprehension in regard to the real facts of the case. The deponent further says, in modification of the last clause of the above affidavit, that he never said to any person that he was authorized to sell or contract to sell any of said Bronson lands without the assent of said Bronson to such sale.

(Signed) W'M C. BOSTWICK.

I hereby certify that the foregoing is a true copy of the original affidavit of W'm C. Bostwick, and that the original affidavit was sent to A. L. Cumings, of Galena, Illinois, July 10th, 1867.

[SEAL.] WALTER H. CALHOUN,
Notary Public City & County of New York.

A certified copy of the original was sent to Jno. Mattocks, of Chicago, March, 14, '67.

W. H. C.

40 UNITED STATES OF AMERICA,
District of Wisconsin, ss:

[SEAL.] The President of the United States of America to Edwin F. Corey, jr., 54 Wall st., New York, greeting:

Know ye that, in confidence of your prudence and fidelity, you have been appointed, and by these presents you or any one or more of you are invested with full power and authority to examine Walter H. Calhoun, on his corporal oath, as witness in a cause depending in the circuit court of the United States for the district of Wisconsin, wherein Frederic Bronson, executor, &c., of Arthur Bronson, dec'd, is complainant, and Edward Chappel, senior, Edward Chappel, junior, & John Chappel are defendants, on the part of the complainant, upon the interrogatories annexed to this commission, and therefore you are hereby commanded that you, or any one or more of you, at certain days and places to be appointed by you for that purpose, do cause the said Walter H. Calhoun to come before you, and then and there examine him on oath upon the said interrogatories, and that you take such examination and reduce the same into writing, and return the same annexed to this writ, closed up under your seal, or the seals of any one or more of you, into the said circuit court of the United States, before the judge thereof, with all convenient speed.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, at the city of Milwaukee, in said district, this twenty-eighth day of July, in the year of our Lord one thousand eight hundred and sixty-eight, and of the independence of the United States the ninety-third.

EDWARD KURTZ, *Clerk.*

41 *Rules.*

On the receipt of the commission, made out as aforesaid, by any one

of the commissioners named, he shall give notice to the other commissioners named therein of the time and place of taking the depositions, if possible, and if any of the commissioners are absent at the execution of said commission, any one or more present may proceed to execute the same, (unless otherwise expressly directed therein,) as if all were present; but they must certify that those absent have been duly served with notice of the time and place of executing said commission, or the reasons for their not being so notified.

The persons to whom such commission shall be directed, or any one or more of them, unless otherwise expressly directed therein, shall execute the same as follows:

First. They, or any of them, shall publicly administer an oath to the witnesses named in the commission, that the answers given by such witnesses to the interrogatories proposed to them shall be the truth, the whole truth, and nothing but the truth.

Second. They shall cause the examination of each witness to be reduced to writing, and to be subscribed by him, and certified by such of the commissioners as are present at the taking of the same.

Third. If any exhibits are produced and proved before them, they shall be annexed to the depositions to which they relate, and shall, in like manner, be subscribed by the witness proving the same. (This section must be understood to refer to such papers as can be produced upon the examination.) If the paper referred to be a record not subject to the control of the party, or the commissioners, it will be sufficient to annex a copy, and the original may be produced on the trial separate from the commission.

Fourth. The commissioner or commissioners shall subscribe each sheet of the depositions, and annex all the depositions and exhibits to the commissions, upon which the return shall be endorsed, and shall close them up under their or his seals, and shall address the same, when so closed, to the clerk of the court from which the commission issued, at his place of residence, with the style of the suit.

Fifth. If there is or is not a direction on the commission to return the same by mail, they or he shall immediately deposit the packet so directed in the nearest post office.

Sixth. If there be a direction on the commission to return the same by an agent of the party who sued out the same, the packet so directed shall be delivered to said agent.

42 UNITED STATES OF AMERICA,
District of Wisconsin, ss:

In circuit court, to September term, A. D. 1868.

FREDERIC BRONSON, EXECUTOR, &C., OF ARTHUR BRONSON, deceased, *vs.* EDWARD CHOPPEL, SENIOR, EDWARD CHOPPEL, JUNIOR, & JOHN CHOPPEL.	In equity.—Bill for foreclosure of mortgage.

The said defendants, or M. M. Cothren, their attorney of record, is hereby notified that I will apply at the clerk's office of said court, in Milwaukee, on the 27th day of July instant, for a dedimus potestatem to issue to Edwin F. Cory, jr., as commissioner, to take the deposition of Walter H. Calhoun, a witness for the complainant, on the following interrogatories, when & where you can file cross-interrogatories, and name a com-

missioner if you think proper; said deposition to be read on trial of said cause.

July 7th, 1868.

A. L. CUMMINGS,
Sol'r for Complainant.

Interrogatories to be propounded to Walter H. Calhoun, a witness for complainant.

1st int'y. State your name, age, residence, & occupation, and what means of knowledge (if any) you have of complainant's business for the last five years. State particularly all that tends to show your familiarity with his business. If you state that you have been employed by him in his business, state in what capacity, & how long.

2d. State what (if anything) you know of the sale of lands now in controversy in this suit by complainant to defendants; in what capacity, fiduciary or otherwise, said complainant acted in said transaction; & how said sale was accomplished. State fully.

3d. State what (if anything) you know of complainant's absence in Europe in the years 1865 & 1866, or parts of those years, & who had the charge (& whether the sole charge) of his business as executor during his said absence.

4th. State what you know of the contract or contracts of sale
43 of said lands, & annex a copy of the original contracts (if possible) as an exhibit of this your deposition; also state in that connection (if you know) how William C. Bostwick was employed in said sale, whether as a broker, agent, or attorney; &, if as broker, what acts he performed for each party to said sale; or if as agent or attorney, whose agent or attorney he was, & what was his authority, & by whom given, & how evidenced.

5th. State what you know of the bond & mortgage given by defendants to complainant as executor, &c., (being the same sought to be foreclosed in this suit,) in whose possession the same was after given; & what payments, if any, have been made thereon by defendants, giving dates and amounts of payments, with any fact or circumstance relating thereto.

6th. State who had charge of complainant's correspondence during the last five years or more; & if you answer that it has been in your charge, state further how long you have been in charge of said correspondence, & to what extent; & state, in that connection, whether or not the said William C. Bostwick ever claimed to act as agent or attorney for said complainant; &, if so, to what extent, & in relation to what business; also state whether or not any printed handbills, or notices, or advertisements came to the hands of the said complainant, in which the said Bostwick signed himself as agent or attorney, or claimed to be the agent or attorney of the said complainant.

7th. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matter in question in this cause? If yea, set forth the same fully and at large in your answer.

A. L. CUMMINGS,
Sol'r for Complainant.

44 UNITED STATES OF AMERICA,
District of Wisconsin, ss :

I, Edward Kurtz, clerk of the circuit court of the United States of America for the district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals, and are correct transcripts therefrom now on file and remaining of record in my office.

In testimony whereof I have hereunto set my hand and duly affixed the seal of the said court at the city of Milwaukee, in said district of Wisconsin, this 28th day of July, in the year of our Lord one thousand eight hundred and sixty-eight, and of the independence of the said United States the ninety-third.

[SEAL.] EDWARD KURTZ, *Clerk.*

45 *Deposition of Walter H. Calhoun.*

UNITED STATES OF AMERICA,
State of New York, City & County of New York, ss :

In circuit court of the United States for the district of Wisconsin.

FREDERIC BRONSON, EXECUTOR, &C., OF ARTHUR Bronson, deceased, *vs.* EDWARD CHAPPEL, SENIOR, EDWARD CHAPPEL, junior, & John Chappel.	In equity.—Bill for foreclosure of mortgage.

The deposition of Walter H. Calhoun, taken on this thirty-first day of July, A. D. 1868, at the office of Edwin F. Corey, junior, No. 54 Wall street, in the city, county, and State of New York, in pursuance of the commission hereto annexed.

The said WALTER H. CALHOUN, having been first duly sworn to testify the truth, the whole truth, and nothing but the truth, in answer to the interrogatories proposed to him, did depose and say as follows :

In answer to the first interrogatory hereto annexed—

My name is Walter H. Calhoun ; my age is 34 years ; I reside in the city of New York ; my occupation is clerk for Frederic Bronson, and have been such clerk for about 15 years last past, and as such I have had charge of his correspondence, receiving, reading, and filing letters to him ; copying and addressing his letters on business matters. I also keep his land-book, a full and accurate record of all his lands which he owned individually and as executor of Arthur Bronson, deceased, and in any other capacity, and all conveyances and contracts of sale thereof made or executed by him individually, or as executor, or otherwise ; preparing contracts for the sale of lands, and having general access to his books of account.

In answer to the second interrogatory hereto annexed—

The lands in controversy, to wit, the southwest quarter and south half of southeast quarter of section 33, township three, range
46 one, in Lafayette County, Wisconsin, excepting therefrom seven acres conveyed by deed to Stephen Webster, and also four $\frac{88}{100}$ acres conveyed by deed to Joseph Thomas, leaving two hundred and twenty-eight $\frac{12}{100}$ acres, more or less, the application to purchase which by the defendants, Chappels, was forwarded to the complainants by William C. Bostwick ; upon such application the complainant accepted the offer to purchase, and sent to said Bostwick a contract in duplicate,

of which the annexed exhibit, marked No. 1, with my signature, is a copy, and which was executed by him as the executor of the last will and testament of Arthur Bronson, deceased, with directions to said Bostwick to deliver one of said duplicates contracts so executed by complainant upon the said Chappels executing the counterpart of said contract, and paying to said Bostwick the cash payment to be made on delivery of the contract required by said contract, which cash payment said Bostwick was specifically authorized to receive, and was requested to remit the same to complainant, together with the contract executed by the said Chappels; subsequently said Bostwick wrote to complainant that said Chappels declined to purchase by contract, and required a deed of the land to be made to them; they to pay part in cash, and to secure, by their bond and mortgage upon the premises, the balance of the consideration unpaid; this proposition was acceded to by the complainant, who thereupon sent to said Bostwick his deed of the aforesaid lands to the said Chappels, executed by him as executor of the last will and testament of Arthur Bronson, deceased, with like instructions to said Bostwick as in the case of the contract to deliver said deed to said Chappels upon their paying to him the amount required to be paid in cash, and executing and delivering to him their bond and mortgage upon the premises for the remaining unpaid portion of the consideration of the deed, and with instructions to said Bostwick, to
47 remit the amount of cash payment so received, together with the bond, and to file the mortgage for record, and when recorded to transmit said mortgage to said complainant; that said Bostwick, on the 15th day of June, 1865, paid to said complainant, in person, in the city of New York, the cash payment made to him by said Chappels for said deed of said lands, less his commissions of 5 °|₀ on the whole consideration-money named in the deed, and sundry disbursements, as follows: Paid for surveying, $22 00; telegraph message, $3 60, and allowed to Higgins for repairs on house, $13 50; that the said Bostwick, by his letter of September 12th, 1865, transmitted to said complainant the bonds and mortgage of the said Chappels upon the said lands for the balance of the consideration of the deed unpaid, to wit, $5,343 60.

EDWIN F. COREY, JR.,
Commissioner.

In answer to the third interrogatory hereto annexed—

The complainant was not absent from this country during the year 1865, having returned in October, 1864, after an absence of some three years, but he left again for a voyage to Europe on or about the 15th of May, 1866, and returned to this city on or about the 27th of November of the same year; and he again left the country on the 8th day of July, 1868, on another voyage to Europe for the improvement of his health. During the absence of said complainant from this city, his business and affairs were in the general charge of Elias L. Smith, with my assistance as clerk, and no business of the complainant, either individually or as executor, could be transacted except by Mr. Smith.

In answer to the fourth interrogatory hereunto annexed—

The manner of the sale of the lands in controversy has been stated in the answer to the second interrogatory; said Bostwick has been employed by said complainant to transmit to him offers to purchase lands belonging to said complainant individually or as executor. If such offers so transmitted by said Bostwick were accepted by said complainant, contracts in conformity were prepared by me under the direction of said complainant, and executed by him, and transmitted to said

48 Bostwick, to be delivered upon receiving the cash payment, and the counter-part executed by the purchaser; all other or subsequent payments on said contracts being specifically required to be made to the complainant at his office, in the city of New York. No authority was given by the complainant to Bostwick for the sale and disposal of the lands referred to in the complaint, nor any lands owned by said complainant as executor or otherwise. Said Bostwick was allowed a commission on sales effected through him as aforesaid, which was paid at the time the contract was executed and delivered.

In answer to the fifth interrogatory hereunto annexed—

The bond and mortgage given by the defendants, Chappels, to said complainant as executor, &c., for the said sum of $5,343 60, were received by said complainant September 16, 1865, and were placed in his safe, in his office, in the city of New York, and have never since been out of his possession. On the 22d day of December, 1866, complainant wrote to defendant that there was due and payable upon their bond and mortgage to him two instalments of principal, which, together with interest upon the principal, amounting to $1,795 94, which he requested that they would cause to be paid to him in this city without delay; that the first and only payment received from said defendant by said complainant on said bond and mortgage was the sum of $927 13 on the 22d of February, 1867, per of letter Edward Chappel, junior, dated February 18th, 1867. On the 12th February, 1868, complainant received a letter from Edward Chappel, jr., dated February, 8th, 1868, enclosing a draft on bank in this city, payable to the order of complainant for $878 89, which sum the said Edward Chappel, jr., stated to be the amount due February 13th, 1868. On the same day the said complainant returned to said Edward Chappel, jr., the said draft, stating that he could not receive it as the amount due him, as he claimed a much larger amount then past due, as he would perceive by letter of said complainant dated February 23, 1867, giving him a statement of the account, and he accordingly returned to him the draft.

49 In answer to the sixth interrogatory hereunto annexed—

For the last five years all letters upon business matters received at complainant's office have been opened to my perusal and been perused by me; the answers thereto, and all letters relating to lands and other business matters, have been copied by me or perused by me, and in no letter nor in any other manner has the said William C. Bostwick ever claimed to act as agent or attorney for said complainant, nor has said complainant, by any letter or otherwise, ever admitted or recognized said Bostwick as his agent or attorney. And during the above-mentioned period no printed handbills, notices, or advertisements came into the hands of said complainant in which the said Bostwick signed himself as agent or attorney, or claimed to be the agent or attorney of said complainant; and had any handbills, notices, or advertisement, by the tenor of which the said Bostwick claimed to act as agent or attorney of the said complainant, been received by the said complainant or at his office, they would have become known to me.

EDWIN F. COREY, JR.,
Commissioner.

In answer to the seventh interrogatory hereunto annexed—

The said William C. Bostwick was merely the correspondent of the said complainant, authorized to receive and transmit offers for the purchase of any lands, which, if said complainant accepted, he would forward a contract with the purchaser, to be delivered on his executing the

counterpart and making the cash payment, which, with the contract so executed, the said Bostwick was requested to transmit to said complainant, less his commissions of 5%, not on the cash instalment paid, but on the whole of the consideration-money. Thereupon the said Bostwick's relations with said complainant ceased in said transaction after the cash payment had been transmitted to said complainant; and a supplementary article was subjoined to every contract in words and figures as follows:

"William C. Bostwick, esq., of Galena, is authorized to receive and receipt for the first payment on this contract; all subsequent payments to be made to F. Bronson, in the city of New York.

"FRED'C BRONSON, *Ex'r.*"

No claim for compensation for any service was ever made by him against the complainant as executor or otherwise, or allowed, except for commissions on the sale of land; and except in a single case, where he was retained as counsel to foreclose a mortgage against one Thomas C. Legate, he was never authorized or employed to make collections or receive any monies, except the cash payment made on the delivery of a contract or deed.

WALTER H. CALHOUN.

Sworn to and subscribed before me this 31st day of July, 1868.

EDWIN F. COREY, JR.,
Commissioner.

UNITED STATES OF AMERICA,
State of New York, City & County of New York, ss:

I, Edwin F. Corey, junior, the commissioner named in the annexed dedimus potestatem or commission issued out of the honorable the circuit court of the United States for the district of Wisconsin, do hereby certify that, in pursuance of the said commission, I caused to come before me, at my office, No. 54 Wall street, in the city, county, and State of New York, on the day of the date hereof, Walter H. Calhoun, the witness named in said commission and in the caption hereof, and whose testimony is hereto annexed, who was of sound mind and lawful age. And the said Walter H. Calhoun having been by me first carefully examined, cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, his deposition, as hereinbefore set forth, was reduced to writing by me in the presence of said witness, and from his statements; and after carefully reading the same to the said witness, he subscribed the same in my presence, and I have retained the said deposition in my possession for the purpose of forwarding the same with my own hands to the court for which the same was taken.

I further certify that neither of the defendants, either in person or by attorney, were present at the taking of said deposition, and that I am not of counsel nor attorney for either of the parties in said deposition and caption named, nor in any way interested in the event of the cause named in said caption and commission.

In testimony whereof I have hereunto set my hand as commissioner and affixed my official seal as notary public of the State of New York this thirty-first day of July, A. D. 1868.

[SEAL.] EDWIN F. COREY, JR.,
Commissioner.

51 EXHIBIT No. 1.—WALTER H. CALHOUN.

This contract, made the thirteenth day of February, in the year of our Lord one thousand eight hundred and sixty-five, between Frederic Bronson, of the city, county, and State of New York, executor of the last will and testament of Arthur Bronson, late of said city, deceased, and trustee under said will, party of the first part, and Edward Chappel, senior, Edward Chappel, junior, and John Chappel, of Lafayette County, Wisconsin, parties of second part, witnesseth as follows:

First. The said party of the first part, in consideration of the sum of six thousand eight hundred and forty-three $\frac{60}{100}$ dollars, to be paid to the said party of the first part in the city of New York, and of the covenants to be performed by the said parties of the second part, as hereinafter expressed, hereby agrees to sell to the said parties of the second part all that certain piece or parcel of land situate, lying, and being in the county of Lafayette, and State of Wisconsin, known and distinguished as the south half of southeast quarter and the southwest quarter of section thirty-three, in township three, of range one, containing two hundred and twenty-eight acres and twelve-hundredths of an acre, be the same more or less, with the privileges and appurtenances thereunto belonging.

Second. The said parties of the second part, in consideration of the covenants herein contained on behalf of the said party of the first part, agree to purchase of the said party of the first part the above-described land, and to pay for the same to the said party of the first part, or his legal representatives in the city of New York, the said sum of six thousand eight hundred & forty-three $\frac{60}{100}$ dollars, lawful money of the United States, in manner following, that is to say, two thousand two hundred and eighty-one dollars and twenty cents on the execution and delivery of these presents, and the residue in four equal annual instalments from the date of this contract, with interest to be computed from the date of these presents, at and after the rate of seven per centum per annum on the whole sum that shall be, from time to time, unpaid, and to be paid annually, both principal and interest to be paid in the city of New York; and, also, that they will, so long as any part of the principal or interest of the said consideration money remains unpaid, well and faithfully, in due season, in each and every year, pay, or cause to be paid, all taxes and assessments, ordinary and extraordinary, that may, for any purpose whatever, be levied or assessed on said premises, or on this contract, and that they will not commit or suffer any other person to commit any waste or damage to the said lands or the appurtenances.

Third. The said party of the first part further covenants and agrees with the said parties of the second part, that, upon the faithful performance by the said parties of the second part of the covenants and agreements by them to be performed, and upon the payment of the several sums of money above mentioned, and the interest thereon, at the times and in the manner and at the place above mentioned, to the said party of the first part, that thereupon the said party of the first part will well and faithfully execute and deliver a deed for the said premises, bearing even date herewith, with covenants against his own acts only of the above-described premises, with its appurtenances, and not otherwise.

Fourth. It is further mutually covenanted and agreed by and between the said parties hereto that the said parties of the second part may immediately enter on the said land and remain thereon and cultivate the same as long as they shall fulfill and perform all the agreements hereinbefore mentioned on their part to be fulfilled and performed, and no

longer; and that if they shall, at any time hereafter, violate or neglect to fulfill any of said agreements, they shall forfeit all right or claim under this contract, and be liable to the said party of the first part for damages, and shall also be liable to be removed from the said land in the same manner as is provided by law for the removal of a tenant that holds over after the expiration of the time specified in his lease. And it shall be lawful for the said party of the first part, at any time after the violation or non-fulfillment of any of the said agreements on the part of the said parties of the second part, to sell and convey the said land, or any part thereof, to any other person whosoever; and the said party of the first part shall not be liable in any way, nor to any person, to refund any part of the money which he may have received on this contract, nor for any damages on account of such sale. And it is hereby expressly understood and declared that time is and shall be deemed and taken as of the very essence of this contract; and that, unless the same shall in all respects be complied with by the said parties of the second part at the respective times and in the manner above limited and declared, that the said parties of the second part shall lose and be debarred from all rights, remedies, or actions, either in law or equity, upon or under this contract.

Fifth. This contract is hereby declared to be binding on the respective representatives of the parties hereto.

In witness whereof the parties to these presents have hereunto set their hands and seals the day and year first above written.

(Signed) FREDERIC BRONSON, [SEAL.]
Executor of Arthur Bronson.
[SEAL.]
[SEAL.]
[SEAL.]

Sealed and delivered in presence of—

(Indorsed twice:) Copy.
[5-cent stamp affixed.]

William C. Bostwick, esq., of Galena, is authorized to receive and receipt for the first payment on this contract; all subsequent payments to be made to F. Bronson, in the city of New York.

New York, February 13th, 1865.

(S'd) FREDERIC BRONSON,
Ex'r of A. Bronson.

52 DEFENDANT'S TESTIMONY.

Circuit court of the United States for the district of Wisconsin.

EDWARD CHAPPEL, SENIOR, EDWARD CHAPPEL, junior, & John Chappel *ads.* FREDERICK BRONSON, EXECUTOR OF THE LAST will and testament of Arthur Bronson, deceased. } In chancery.

Deposition of witnesses produced, sworn, and examined in the above-entitled cause on the part of the defendants, pursuant to the notice hereto attached.

The defendants appeared by their solicitor, M. M. Cothren, at the

office of the commissioner, in the city of Mineral Point, on the first day of September, A. D. 1868, at 10 o'clock a. m., at which time the following proceedings were had:

Deposition of Edward Chappell, sr.

EDWARD CHAPPELL, senior, a witness produced, sworn, & examined on the part & behalf of the defendants, says, in answer to questions propounded to him by defendant's solicitor, as follows:

Interrogatory 1st. What is your name, age, and place of residence?

Answer. My name is Edward Chappel, senior; age, fifty-three years; and I reside in the town of Elk Grove, Lafayette County, State of Wisconsin.

Interrogatory 2nd. Are you one of the defendants in this action?

Answer. I am.

Interrogatory 3rd. Who acted in behalf of the complainant in making with you and your codefendants the contract for the purchase by you of the lands in complainant's complaint described?

Answer. William C. Bostwick, then of Galena, in the State of Illinois.

Interrogatory 4th. In what capacity did he act for complainant? and in that behalf state fully, in proper order and connection, all that took place between you and the said William C. Bostwick.

53 Answer. He acted as the agent of Frederick Bronson, the complainant in this action. Some time in February, A. D. 1865, I, together with my codefendants, Edward Chappel, jr., and John Chappel, called upon Mr. Bostwick, at his office in the city of Galena, and told him that I understood he wanted to sell the Dairy farm, (being the same as described in complainant's bill of complaint.) He said that he did; that it was for sale; that there had several applied to him to purchase it, but that he had given Edward Chappel, junior, (my son and codefendant,) the first chance, and that he had been offered thirty dollars an acre for it; but if we choose to take it, that was Mr. Bronson's price, and he would close the contract. I told Mr. Bostwick that $30 per acre was too much money, more than the land was worth. He replied he did not know but what it was, but he had been offered $30 an acre, and that was Mr. Bronson's price, and he could not go from that. At this time I had no intention of buying the land for myself, but was present for the purpose of assisting my sons in making the purchase. I told Mr. Bostwick that $25 per acre was as much as I thought the land was worth, and if the boys (my sons and codefendants) thought proper to give $30 they might do so. They told him that they would take it at $30 per acre. Before the papers for the land was made out, Mr. Bostwick advised me to go in with the boys in the purchase of the land, & hold it in partnership; and in accordance with his advice I took part in the purchase & went in with my sons, & we held the land in partnership. After we had concluded to take the land, we proceeded to talk about the terms on which we were to take it; and it was finally agreed & understood on our part, & on the part of Mr. Bostwick, that we were to pay one-third of the purchase-money down, the balance in seven annual instalments, with interest at 7% per annum.

54 The cash or down payment was to be made by us as soon as we received the deed to said land. Mr. Bostwick objected to giving us a deed to the land, & said that Mr. Bronson was not in the habit of giving a deed; but that he would give a land contract, to be signed by

both parties, and, upon the terms of the contract being complied with, he would then give a deed. He said that he would write to Mr. Bronson; and if he, Mr. Bronson, agreed to give us a deed, he would let us know. In a short time we received a letter from Mr. Bostwick, by post, at our place of residence, distant 20 miles from Galena, where the letter was mailed, of which the following is a true copy, I now holding the original in my hand, which letter is hereto attached, marked "A:"

"LOAN & COLLECTION OFFICE,
"*Galena, March 9th*, 1865.

"EDWARD CHAPPEL, Jun'r, *Elk Grove, Wis.*

"DEAR SIR: I have written to Mr. Bronson, inquiring what discount he will allow if you pay cash down for the Dairy farm, and I think I can say to you that he will either make a discount that will suit you or will give you a deed & take a mortgage from you. You would save, by paying down the whole cash, the expense of a mortgage, including stamps, besides the discount he may allow you for cash down. I will write to you as soon as I hear from him.

"Yours, truly,

"W'M C. BOSTWICK."

We did nothing further with regard to the purchase of the land until a short time after the receipt of the above letter, at which time we received another letter from Mr. Bostwick, which is hereto attached and marked "B," and which is in substance as follows: Mr. Bostwick stated that Mr. Bronson would make a discount of $93 60 if we paid the entire consideration or purchase-money down, stating the number of acres and the amount of the purchase-money; and contained a
55 further statement that Mr. Bronson would give a deed and take a mortgage for deferred payments, one to seven years, at 7%, and not restrict cutting of timber for fencing & building purposes on the farm, and waived all restrictions whatsoever after one-half of the purchase-money shall be paid.

Upon the receipt of the last-mentioned letter, I, together with my son, Edward Chappel, jr., went to see Mr. Bostwick again, and we agreed to pay him $6,843 60 for the land, as follows: One-third or $2,281 20 down, the balance in seven annual instalments, as follows: $651 77 on the 13th day of February, 1866; $651 77 on the 13th day of February, 1867; $651 77 on the 13th day of February, 1868; $651 77 on the 13th day of February, 1869; $651 77 on the 13th day of February, 1870; $651 77 on the 13th day of February, 1871; & $651 78 on the 13th day of February, 1872. The down or cash payment of $2,281 20 was not to be made until the deed was delivered. The deferred payments was to be secured by mortgage &, as we supposed, notes, without restriction as to timber, &c.

Mr. Bostwick then named the day for us to call and get the deed, and told us to take possession of the farm in the mean time. On the day appointed, I, together with my sons and codefendants, Edward Chappel, jr., & John Chappel, called on Mr. Bostwick for the purpose of getting the deed & consummating the purchase. Mr. Bostwick told me that the deed had not yet arrived. I told him that we had been disappointed in not getting as much money as we expected, and that we could not raise the amount that we agreed to pay down. He then asked how much we could raise. I told him $1,500. He said he would take that & give us until Nov'r 30th, 1865, to pay the balance of the cash payment, which was $781 20. We then paid him the $1,500, he promising to notify

us as soon as the deed arrived, & he then giving us a receipt therefor, of which the following is a true copy, I now holding the original in my hand :

56

		"3) 6,843 60
		"2,281 20
"Cash	$1,500 00	
"Nov. 30, '65	781 20	
		2,281 20
		4,562 40
"Feb'y 13, '66	$651 77	
" '67	651 77	
" '68	651 77	
" '69	651 77	
" '70	651 77	
" '71	651 77	
" '72	651 78	
		$4,562 40

"Int. @ 7% per ann. on deferred payments from 13 Feb'y, 1865.

"Rec'd, March 25th, 1865, of Edw'd Chappel, sen'r, fifteen hundred dollars, being for cash payment on purchase of southwest quarter and south half of southeast quarter of section 33, town. 3, range one east, in Lafayette County, Wisconsin, excepting that portion heretofore conveyed to Stephen Webster & Joseph Thomas, comprising eleven $\frac{88}{100}$ acres, & leaving 228.12 acres purchased by said Chappel as aforesaid, & the terms of payment to be as specified above.

"FREDERICK BRONSON, *Ex.*,
"P'r W'M C. BOSTWICK, *Att'y.*

I do not remember of having anything further to do with Mr. Bostwick concerning the land at this time, and, in fact, not until the 10th day of May, 1865, at which time defendants received a letter from Mr. Bostwick, by post, at their place of residence, in La Fayette County, advising them that their deed had arrived, and requesting them to call and execute the mortgage .In a day or two after the receipt of the last-mentioned letter, I, together with my codefendants, went to the office of Mr. Bostwick, in Galena, for the purpose of executing the mortgage & receiving our deed to the land described in the complainant's bill of complaint. Up to this time it was understood by & between all

57 parties that we were to give our promissory notes for the balance of the purchase-money not paid down, which notes were to be secured by a mortgage on the farm; and I was surprised, when we called on Mr. Bostwick to execute the papers, to find that he had a bond instead of promissory notes for us to execute. I at first objected to signing the bond. Mr. Bostwick said that he never had any trouble with any person in selling lands for Mr. Bronson, & that Mr. Bronson was a fair-dealing man & that everything would come out all right. Upon such representations & others to a similar effect from Mr. Bostwick, acting as the agent from Mr. Bronson, we reluctantly executed the bond & mortgage, & received our deed to the farm. I told Mr. Bostwick that we could lift the notes as they became due. Mr. Bost-

wick said there would be no difference, as the payments would be entered on the bond as soon as they were made.

The bond contained a provision to the effect that the payments were to be made in the city of New York; and when I heard that part of the bond read I objected to it. Mr. Bostwick said: "That I am Mr. Bronson's agent, but I am equally bound to do you justice; and that the provision in the bond with regard to payments being made in New York meant nothing more than exchange on New York;" in other words, we were to make our payments, together with sufficient to purchase exchange on New York. Nothing further was done in the matter until some time in Nov'r, 1865, at which time we (defendants) received a letter from Mr. Bostwick notifying us that the second payment on the land purchased would fall due on the 30th of Nov'r, '65, which said letter also gave the amount of the payment, $781 20, and said with interest from 13th February last, in which said letter Mr. Bostwick said: "I hope you will be as prompt as possible in making your payment;"
58 which said letter bore date Nov'r 28th, 1865, and is hereto attached, marked "C."

A few days after the receipt of the last-mentioned letter, I went to Galena and called on Mr. Bostwick, and paid him the 2nd payment mentioned in his letter, but which was in fact the balance of the cash or down payment. The second payment, according to my understanding of the matter, was not due until February 13th, 1866. At the time of making the payment to Mr. Bostwick, in accordance with the letter received from him, I took his receipt therefore, of which the following is a true copy, I now holding the original in my hand:

"Rec'd, Galena, Dec. 4, '65, of Edward Chappells, sr., eight hundred & twenty-five $\frac{36}{100}$ dollars, on ac. of 2 payment & int. due Nov'r 30, '65, of Bronson farm.

"W'M C. BOSTWICK,
"P'r F."

When the next payment, or first annual instalment, as I understood it, became due, on the 13th day of February, 1866, we prepared the amount, and my son and codefendant, Edward Chappel, jr., took it and went to Galena for the purpose of paying it to Mr. W'm C. Bostwick, as Mr. Bronson's agent. He returned bringing a receipt, of which the following is a copy, I now holding the original in my hand, knowing it to be in the handwriting of Frank Bostwick, W'm C. Bostwick's son:

"Rec'd, Galena, Feb'y 28, '66, of Edward Chappel, jr., nine hundred and eighty dollars, being for second payment on land bought of Frederick Bronson at Elk Grove, Wis., called the Dairy Farm.

"W'M C. BOSTWICK,
"P'r F. BOSTWICK."

59 In a short time afterwards we received a letter by post, at our place of residence, distant 20 miles from Galena, the place where the letter was mailed, of which the following are the exact contents, I now holding the original in my hand, and knowing it to be in the handwriting of Frank Bostwick, the son of W'm C. Bostwick:

"LOAN AND COLLECTION OFFICE,
"*Galena, M'ch 21st*, 1866.

"EDWARD CHAPPELS, Jr., *Elk Grove, Wis.*

"DEAR SIR: I beg leave to annex statement of the actual am't due

by you on the payments maturing 13th Feb'y last, showing that in the payment of the $980 made by you 28th ult. there was an excess of $1 55, which stands to your credit. You have my rec'pt for the $980 above named, and I will see to it that the payments made by you are all properly made upon the bond & mortgage. I include in statement exchange on your payment of 4th Dec. last.

"Statement:

"3rd payment, due Feb'y 13, '66	$651 77	
"Int. 1 yr. to Feb. 13, '66, on 4,562 40, 7%	319 36	
	$971 13	
"Int. on $971 13 from 13th to 28th Feb'y, '66, 15 d	2 83	
		973 96
"Ex. on $973 96, ¼%		2 43
"Exc. on $825 36, pd. 4th Dec		2 06
		$978 45
"Am't pd. by you 28th Feb'y, '66, $980, bal. over		1 55

"Yours, truly, &c.,

"W'M C. BOSTWICK,
"Per F."

Interrogatory 5th. Did you & codefendant ever pay the complainant any sums farther than you have above specified? If so, state when, & the amounts.

Ans. Somewhere about the 18th Feb'y, 1867, we enclosed to the complainant, in New York City, the sum of $927 13, being for the
60 installment, with interest, becoming due the 13th of that month, for which Mr. Bronson sent us an acknowledgment by letter, and stated that he had applied it as payment on the bond & mortgage, which is the same bond & mortgage as described in complainant's bill of complaint. In the letter sent by us enclosing the above sum, we stated in substance that the sum enclosed was in full for installments due up to that date.

On the 8th day of Feb'y, 1868, we, defendants, enclosed in letter to complainant a draft for the sum of $878 89, being the amount of the instalment to become due on the 13th of that month, which draft the complainant returned to us by letter, (and which we now produce here in court,) with the following statement:

"I cannot accept this draft as the amount due on the 13th February, 1868, as I claim a much larger amount, now past due, as you will perceive by my letter of the 23d February, 1867, and accordingly I return the draft herein to you."

Inter. 6. Did you ever see any letter or letters addressed to W'm C. Bostwick by complainant, in the handwriting of complainant, relating to your transactions with him, or containing anything relating to W'm C. Bostwick's agency for complainant?

Ans. I have seen and now hold in my hand a letter in the handwriting of complainant, containing the following words and figures in the complainant's handwriting:

"NEW YORK, *March* 3, 1865.

"W'M C. BOSTWICK, Esq.

"DEAR SIR: I have just received your letter of the 24. In

61 this letter you say Mess. Chappel ask for a deed. In your last it was only for an extension of the time of payment, with an option to pay earlier. I have answered that letter, on which I hope you may be able to conclude the arrangement. If they will not carry out the contract, and insist on a deed and a mortgage, please let me know. The mortgage will put him to an unnecessary expense of drawing & recording & stamp, which are always paid by the mortgagee, for whose benefit they are made, without any additional security to them. Still, if they insist on a deed, I am willing to assent to their request, & would even yield the deferred payments reluctantly and rather than lose the sale.

"The copper land near Mineral Point, of which I give you a list below, are for sale. I originally held an undivided interest. A partition was made, which I thought unjust, & did not ratify, & have since purchased the whole under a tax sale; hence my deed will be a quit-claim. The lands are quite valuable. Can you forward an application for them?

"Yours, very truly,

"F. BRONSON, *Ex.*"

I hold in my hand a letter purporting to have come from Frederick Bronson, bearing date New York, March 31st, 1864, addressed to W'm C. Bostwick, acknowledging the receipt of money for $520 00, which he says he has applied as payment on contract of John McDermot, and adds:

"I have also credited thereon $30 received by you from him, and retained for bal. of your commission on sale to him, making the total credit of $600 00 on said contract, including the $50 previously received and retained by you. You will please charge him $49 01, (ent'd,) for taxes, 1862, and expenses of payment paid by me April 1, '63, on his land, through Nelson Dewey, esqr."

62 In the same letter he states that he incloses a deed to W'm W. Field for land, upon which is due $533 33, with interest; also a deed for Tho's Forney, upon which is due $283 92, with interest, in relation to which occurs the following words:

"Which deeds you can deliver on receiving payment due and surrender of respective contracts."

On the same sheet, purporting to have been written by Elias S. Smith, attorney for complainant, is written the following:

"Mr. Bronson, in a letter recently received, writes, 'I am willing to sell lands, through Mr. Bostwick, upon an advance in price equal to the depreciation of paper money at the time of sale, payable in ten years; one-quarter down & the residue in five yearly payments; the first payment to be made in five years from the date of the contract, the rest of the principal, & interest 7%, to be paid in wheat, (the present price of wheat may be taken to ascertain the quantity of bushels,) delivered at Galena. If such a contract is made, it will not necessarily involve the use of wheat except as a measure of value.'"

In a letter purporting to come from the complainant, and signed Frederick Bronson, by Elias S. Smith, attorney, & addressed to W'm C. Bostwick, esqr., bearing date March 9th, 1864, which letter I now hold in my hand, it is stated that he has forwarded to W'm C. Bostwick several deeds for lands, in relation to which the following language is used:

"You will, of course, receive from the several parties the amounts due on the contracts, and on the surrender of the contracts will receipt thereon for the deeds, before you deliver the deeds, pursuing the course you suggest in your letter respecting the assignment of the Barber contract. Annexed I hand you statement of the amounts due on the respective contracts, which you will please remit to me when they are received by you."

63 I also hold a letter in my hand, signed by the complainant, under date of October 5th, 1865, addressed to W'm C. Bostwick, esqr., in which the said Bostwick is directed to receive moneys from Byron Lillman upon the sale of a tract of land, and send the same to him, deducting his (the said Bostwick's) commission therefrom on the sale. In a postscript to the same letter Mr. Bronson calls the attention of the said W'm C. Bostwick to the Elk Grove farm, which I suppose had reference to the lands described in complainant's bill of complaint, and expresses a desire to close the matter relating to that tract.

I hold a letter in my hand signed by Frederick Bronson, directed to W'm C. Bostwick, esqr., in which he (complainant) expresses a desire to sell the Legate lands then remaining unsold, (of which the lands described in the complaint are a part,) and requesting the said W'm C. Bostwick to act for him in the matter of selling said lands, which said letter bears date December the 15th, 1864.

I hold in my hand a letter in the handwriting and over the sign-manual of complainant, of which the following is a true copy:

"NEW YORK, *May* 24, 1865.

"W'M C. BOSTWICK, Esqr.

"DEAR SIR: I have been hoping every day to hear from you relative to the Chappel sale and other matters still open. Having advised *none* [some] of the parties interested in the Legate lands of the sale [&] of the *purport* [prospect] of a dividend, I am now in an awkward position, & hope you will expedite that matter as much as possible. Please close also the delivery of the other deeds on hand on receiving the balance due. I hope that you will be able to effect sales of the residue of the Legate lands on favorable terms soon. Please let me hear from you by the return of mail.

"Yours, truly,

"F. BRONSON, *Ex.*".

64 I hold in my hands a letter written and signed by the complainant, of which the following is a true copy:

"NEW YORK, *Nov'r* 20, '65.

"W'M C. BOSTWICK, Esqr.

"DEAR SIR: I have your letter of the 17th inst. If Mr. Smith does not want the land—the N. E. 26, & S. W. ¼ 23, 6, 2 W.—you may sell the former tract to Mr. Forney on the terms mentioned in your letter.

"I am pleased to hear that you will give the Legate lands early attention.

"Hoping the early & perfect restoration of your health, I am, very truly, yours,

"F. BRONSON, *Ex.*"

I hold in my hand a letter signed by the complainant, and bearing

date February 18th, 1860, directed to W'm C. Bostwick, esqr., Galena, Ill's, in which occurs the following, to wit:

"The memorandum at the foot in Forney's contract I have recently put on all my land contracts, to repel the construction lately sought to be put on them, that the first or other payment, if received by the agent, is an implied waiver of the claim for exchange, and of the stipulation in the body of the contract, that the money is to be paid to me in the city of New York."

I have seen numerous letters signed by the complainant & directed to W'm C. Bostwick, relating to complainant's business, all of which treat the said W'm C. Bostwick as complainant's agent; the letters above copied, & from which extracts are made, & to which I refer, are letters placed in my hands by Frank Bostwick, the son & former confidential clerk of W'm C. Bostwick, which said letters I expect to return to the said Frank Bostwick.

Interrogatory 7. Previous to executing the mortgage in the complaint described, had you any conversation with W'm C. Bostwick relating to the clause in the bond requiring payment to be made in the city of New York? If so, state what that conversation was.

65 Answer. At the time that we signed the bond, Mr. Bostwick read the bond to us, & when he came to that clause where it was said that the money was to be paid in the city of New York, he stopped & said, "I'll explain to you;" and then he said, "I am Mr. Bronson's agent, but I am equally bound to do you justice; this means nothing more than you have to pay the exchange from Galena to New York, and the interest on the amount until it reaches Mr. Bronson, which will be about three days from this place;" and he said further, "If you doubt my agency, I refer you to Gov'r Dewey." We did not doubt his agency, & executed the papers. The reasons why we did not doubt his agency were, we had seen handbills & advertisements in the public newspapers, stating that W'm C. Bostwick was the agent of the Bronson lands before we went to him about these lands; several of our neighbors had purchased lands of Bronson through the said W'm C. Bostwick, as Mr. Bronson's agent. It was generally understood through the country that he was Mr. Bronson's agent, and we knew that our neighbors had paid Mr. Bostwick installments as they became due upon their purchases of the Bronson lands, and taken W'm C. Bostwick's receipt therefor, as agent of Mr. Bronson. And it was notorious all through that section of country, both in Wisconsin & Illinois, that W'm C. Bostwick was Mr. Bronson's acting agent for the Bronson lands.

Interrogatory 8. At the time that you agreed upon the terns of purchase with W'm C. Bostwick of the lands described in the complaint, was there any understanding with regard to days of grace for making payment of the annual installments?

Answer. When we closed the verbal agreement with Mr. Bostwick for the purchase of the lands, on or about the 25th day of March,
66 1865, it was agreed that we should pay interest from the 13th of February, and that we should have 30 days from the 13th day of February in each year to make each annual payment in.

EDWARD CHAPPELL, SEN'R.

Subscribed & sworn to before me this 2nd day of Sept'r, 1868.

CYRUS LANYOU,
United States Circuit Court Commissioner
for the District of Wisconsin.

Deposition of Edward Chappell, jr.

EDWARD CHAPPELL, junior, a witness produced, sworn, & examined on the part & behalf of the defendants, says, in answer to questions propounded to him by defendants' solicitor, as follows:

Interrogatory 1st. What is your name, age, and place of residence?

Answer. My name is Edward Chappell, junior; age, twenty-nine years, and reside in the town of Elk Grove, Wisconsin.

Interrogatory 2nd. Are you one of the defendants in this action?

Answer. I am.

Interrogatory 3rd. In the purchase of the lands described in the complaint herein of the complainant, did you negotiate with F. Bronson, or with some other person as his agent? And if with another, as his agent, state who, and everything you know with regard to the negotiation and consummation of the purchase.

Answer. We negotiated with W'm C. Bostwick in the purchase of the land, who acted as the agent of the complainant. The reasons for my knowing W'm C. Bostwick to be the agent of the complainant were, I knew of several of our neighbors who had purchased lands of Mr. Bronson through W'm C. Bostwick, as his agent; and of their making payments to the said W'm C. Bostwick, as his agent as the payments became due, and of his giving receipts for said payments as such
67 agent; and I also know of neighbors paying rent to the said Bostwick, as the agent of said Bronson, for lands held by them from Mr. Bronson, and also from having made inquiries; and it being notorious through the neighborhood that W'm C. Bostwick was the acting agent of Mr. Bronson in the sale of lands, and in receiving payment on sales made. The reason of my first applying to Mr. Bostwick to purchase the so-called "Dairy Farm" was, that I understood through my neighbors that he wanted to sell the farm and take wheat in payment. I called on Mr. Bostwick some time in December, 1864, and made inquiries concerning the farm. I asked Mr. Bostwick if he wanted to sell the Dairy Farm and take wheat in payment therefor. He said that Mr. Bronson had authorized him to sell the farm and take wheat in payment therefor, but that he had lately received a letter from Mr. Bronson stating that he would not sell it for wheat, that he was better satisfied with the greenback, and that he would sell it for the currency that was going. I then asked him what he asked an acre for the farm. He said that Bronson's price was $30 an acre. I told him that I would think the matter over, & call and see him again, and then asked him whether he would give me the first chance in the sale of the land. He replied he would, that I was the first person who had called upon him to purchase the land. After that I went with Edward Chappel, senior, and made the contract with Mr. Bostwick, and executed the bond & mortgage, and paid the first $1,500 on the said purchase in the manner stated by Edward Chappel, senior, in his deposition which has just been taken & read in my presence. When the first annual payment became due I took the money to the office of W'm C. Bostwick, esqr., in Galena, and paid it to his clerk, Frank Bostwick, & took his re-
68 ceipt, the copy of which is in Edward Chappel, senior's, deposition, as stated by Edward Chappel, senior. We forwarded the next annual installment to F. Bronson, complainant, and received for answer that the same was received and endorsed on the bond. The next annual payment was forwarded to Mr. Bronson by us, & by him returned, as stated by Edward Chappel, senior, and which we now hold ready to be disposed of as the court shall direct. I have seen numerous

letters from F. Bronson to W'm C. Bostwick, in which the said Bostwick is addressed & recognized as the agent of said Bronson, which letters are the same referred to by Edward Chappel, senior, in his deposition.

EDWARD CHAPPEL, JR.

Subscribed & sworn to before me this 2nd day of September, A. D. 1868.

CYRUS LANYOU,
United States Circuit Court Commissioner
for the District of Wisconsin.

I, Cyrus Lanyou, commissioner of the circuit court of the United States for the district of Wisconsin, residing at the city of Mineral Point, in said State, do hereby certify that the above and foregoing depositions of Edward Chappel, senior, and Edward Chappel, junior, were taken before me, at my office, in the city of Mineral Point, Wisconsin, on the first day of September, A. D. 1868, commencing at ten o'clock in the forenoon of said day, and continuing until 12 o'clock of the next day, Sep. 2d, 1868, when the same were closed; that said depositions were taken pursuant to the notice hereto attached; that M. M. Cothren, esqr., attended at the taking of said deposition for and in behalf of defendants; that no person appeared for complainant at the taking of said deposition; that said depositions were taken upon verbal interrogatories propounded by defendants' solicitor, which interrogatories were reduced to writing by me in the presence of said
69 witnesses; that the answer of each witness was carefully reduced to writing by me in his presence, as the same was given by him; that said witnesses, before giving their evidence, were each sworn to testify the truth, the whole truth, & and nothing but the truth, relating to the matter in difference wherein Frederick Bronson, executor of the last will and testament of Arthur Bronson, deceased, was complainant, and Edward Chappel, senior, and Edward Chappel, jr., and John N. Chappel were defendants. After all of the answers to said interrogatories were closed the deposition of each of said witnesses were carefully read over to him, and then was by him & subscribed in my presence, and then each was sworn that the deposition by him subscribed was true.

CYRUS LANYOU,
United States Circuit Court Commissioner
for the District of Wisconsin.

United States circuit court for the district of Wisconsin.

FREDERICK BRONSON, EXECUTOR OF THE LAST will and testament of Arthur Bronson, deceased,
vs.
EDWARD CHAPPEL, SENIOR, EDWARD CHAPPEL, junior, and John N. Chappel.
} In chancery.

Take notice that, on the first day of September, A. D. 1868, before Cyrus Lanyou, esq'r., a court commissioner of said court, at his office, in the city of Mineral Point, State of Wisconsin, commencing at the hour of ten o'clock in the forenoon of said day, will be taken the depositions of Edward Chappel, senior, Edward Chappel, junior, and John N. Chap-

pel, to be used in evidence in the above-entitled cause, at the hearing thereof, on the part of defendants, which said depositions will be
70 taken upon oral interrogatories to be propounded by defendants' solicitor, at which time and place you can attend and propound to each of said witnesses such cross-interrogatories as you may see fit.

Mineral Point, August 26th, 1868.

Yours, respectfully,

M. M. COTHREN,
Solicitor for Defendants.

To A. L. CUMMINGS,
Solicitor for Complainants, Galena, Illinois.

STATE OF WISCONSIN, *County of Iowa, ss:*

M. M. Cothren, being duly sworn, deposes and says that on the 26th day of August, A. D. 1868, he inclosed by mail, addressed to the within named A. L. Cummings, esqr., solicitor for complainants, a true copy of the within notice, and deposited the same in the post office, at Mineral Point, in the State of Wisconsin, and prepaid the postage thereon, & further saith not.

M. M. COTHREN.

Subscribed & sworn to before me this 1st day of September, A. D. 1868.

CYRUS LANYOU,
U. S. Circuit Court Commissioner for the District of Wisconsin.

A.

LOAN AND COLLECTION OFFICE,
Galena, March 9th, 1865.

EDW'D CHAPPEL, Jun'r, *Elk Grove, Wis.*

DEAR SIR: I have written to Mr. Bronson, inquiring what discount he will allow if you pay cash down for the Dairy farm, and think I can say to you that he will either make a discount that will suit you, or will give you a deed & take a m't'ge from you. You would save, by paying down the whole cash, the expense of a mortgage, including stamps, besides the discount he may allow you for cash down. I will write to you as soon as I hear from him.

Yours, truly,

W'M C. BOSTWICK.

71 "B."

LOAN AND COLLECTION AGENCY,
Galena, M'ch 14th, 1865.

EDWARD CHAPPEL, Jun'r, Esqr., *Elk Grove, Wis.*

DEAR SIR: Mr. Bronson will make a discount of $93 60, if you pay the entire consideration or purchase-money down; that is to say—

The purchase-money is, 228.12 acres @ $30	$6,843 60
He will deduct	93 60
Will receive as full payment this sum	$6,750

& deliver a deed for the land, or he will give a deed and take a mortgage for deferred payments, one to seven years, @ 7%, and not re-

strict cutting of timber for fencing & building purposes on the farm, and waive all restrictions whatsoever after one-half of the purchase-money shall be paid.

Yours, truly,

W'M C. BOSTWICK.

Please let me know as soon as may be what you conclude upon.

W. C. B.

"C."

LOAN AND COLLECTION OFFICE,
Galena, Nov. 28th, 1865.

EDWARD CHAPPELS, Esq., *Elk Grove, Wis.*

DEAR SIR: Your second payment on the land purchase will fall due on 30th inst.—$781 20, with interest from 13th February last, & I hope you will be as prompt as possible in making your payment.

Yours, truly,

W'M C. BOSTWICK,
Per F'K.

D. C.

Fees, $39 22½.

CYRUS LANYOU,
United States Circuit Court Commissioner for the District of Wisconsin.

72 *Deposition of Frank Bostwick.*

United States circuit court for the district of Wisconsin.

FREDERICK BRONSON, EXECUTOR OF THE LAST will and testament of Arthur Bronson, deceased,
vs.
EDWARD CHAPPEL, SR., EDWARD CHAPPEL, jr., & John N. Chappel. } In chancery.

The deposition of Frank Bostwick, a witness on behalf of defendants, taken before me, on the 23d day of September, A. D. 1868, to be read in evidence in the above-entitled cause at the hearing thereof, for & on behalf of defendants.

At the taking of this deposition, M. M. Cothren, solicitor for defendants, appears on behalf of defendants, and A. L. Cummings, esqr., solicitor for complainants, appears on his behalf.

FRANK BOSTWICK, being duly sworn, testifies as follows:

Int. 1. What is your name, age, occupation, & place of residence?

Ans. My name is Frank Bostwick; I am thirty-three years of age; I am clerk in the railroad office; and reside at Galena, Illinois.

Int. 2. Are you acquainted with William C. Bostwick; and, if so, what relationship do you now bear to him, and what relation have you borne towards him heretofore?

Ans. I am the son of William C. Bostwick, and I have heretofore been a clerk in his office, in Galena, Illinois.

Int. 3. While acting as clerk for William C. Bostwick, did you know

of his acting as agent or otherwise in the transaction of business for Frederick Bronson, executor of the estate of Arthur Bronson, deceased? If so, state generally all you know upon that subject.

Ans. I always understood that he was agent of Frederick Bronson. I supposed he was, from correspondence which he had with him.

73 He acted as agent for him in the management of his lands. He would sell lands, pay taxes, receive money, and remit the same, and he appointed other agents to take charge of some portions of the lands in Wisconsin. I know of my own knowledge that Mr. William C. Bostwick received money upon the sale of the Bronson lands in Wisconsin. I know of a number of such instances. He received money of John Dinsdale, Edward Chappel, defendant in this suit, and of a man by the name of Shuttleworth, also from Thomas Formey, and from quite a number of others, whose names I cannot now recal. He acted as agent for Mr. Bronson, I should think, ten or twelve years.

Int. 4. Please state whether, during the time that you knew of W'm C. Bostwick acting as agent for complainant, he was in the continuous practice of selling Bronson's lands, receiving from time to time payments upon sales, and transmitting the money received as Mr. Bronson's agent?

(Obj. by compl't's solicitor as leading, & otherwise improper.)

Ans. He was in the continuous practice of making sales of the Bronson lands, receiving payments, and transmitting the same, for a period of some ten or twelve years. This was done by him, as I always supposed, as Mr. Bronson's agent.

Int. 5. Do you know of William C. Bostwick having advertised himself as the agent of Bronson, as to the Bronson lands? and, if so, state the kind of advertisements that he made.

Ans. He had two handbills struck off, one large and the other a small handbill. I think the large handbill was signed William C. Bostwick alone. It is my impression that the small handbill was signed William C. Bostwick, as agent of the Bronson lands.

Int. 6. Did William C. Bostwick send by mail copies of those handbills to the complainant?

74 Ans. Yes, sir. We would send him notices whenever we had any struck off. I do not know whether Mr. Bronson received them or not.

(The foregoing direct examination is generally, and each question and answer specifically, objected to, or such portions thereof as are irrelevant, impertinent, secondary, or otherwise illegal or improper as testimony, reserving the objections to be hereafter heard & passed upon by the court.)

Cross-examination by compl't's counsel:

X-int. 1. Can you specify particularly the correspondence alluded to in answer to the 3rd direct interrogatory, from which you understood that William C. Bostwick was agent of Bronson? Give, if you can, the exact words.

Ans. No, sir; I cannot give any exact words. I gathered this understanding from the general correspondence which passed between them.

X-int. 2. During what time or times were you clerk in the office of your father, in Galena?

Ans. I went into his office eight years ago, and I remained there until April, 1866, except for a period of about six months in the year 1865, when I was absent from Galena.

X-int. 3. Can you give the dates, respectively, of the handbills spoken of by you in answer to the 5th direct interrogatory?

Ans. I cannot give the date of the small one. I think the large one was printed in 1866; it is my impression that it was in 1866. The small bill was issued a year or two earlier. I never knew of the printing of more than two sets of handbills.

X-int. 4. Might not the small handbill have been printed earlier, say as early as 1860 or 1861?

Ans. It might have been. I cannot state positively as to that.

X-int. 5. In answer to direct interrogatory six you state your
75 general practice of sending notices to complainant whenever struck off. Have you any other knowledge than the general custom in respect to these particular handbills?

Ans. I have not. I sent some of the large handbills to complainant myself, but as to the others I cannot say.

X-int. 6. Do you know of the terms of the memorandum made by Mr. Bronson at the foot of Formey contract, and of his contracts generally? And, if so, state what are those terms, and append to this your deposition a blank copy of those contracts.

Ans. I do know the terms of the memorandum made by Mr. Bronson at the foot of the Torney contract, and of all the contracts made by him subsequent to the date of that contract. Exhibit "A," with the written memorandum at the foot thereof, is a true copy of the contracts used by Mr. Bronson; and the memorandum written at the foot thereof by the commissioner is a true copy of the memorandum made by Mr. Bronson upon all the contracts executed by him after the date of the Torney contract.

X-int. 7. State whether or not the payments spoken of by you in answer to the 3rd direct interrogatory were made on contracts such as Exhibit "A" of your last answer.

Ans. The contracts made by Mr. Bronson prior to the date of the Torney contract did not have the written memorandum thereon such as is written at the foot of Exhibit "A." The payments made by Chappel, alluded to in my answer to the 3rd direct interrogatory, were made upon a mortgage. The other payments were made upon contracts similar to Exhibit "A," with the written memorandum thereon.

X-int. 8. Can you state the dates and amounts of any particular payments made on contracts similar to Exhibit "A," or do you speak from general impressions in regard to those payments?

Ans. I speak from general impressions. I cannot give the
76 dates or amounts. I know there were payments made after that.

X-int. 9. State who were the agents referred to in answer to interrogatory 3rd, and when were they appointed, and in what manner, as by written and sealed instruments or verbally.

Ans. H. A. W. McNair was one agent; he was the most prominent one. He was the oldest agent we had. He was acting as agent when I went into the office. He received 2½ per cent. on sales from my father. I do not know how he was appointed. My father sent one of the printed notices to a man by the name of Wilson, in Iowa County, Wisconsin, & requested him to take charge out there. He was to have the same percentage on sales as McNair. He was to watch timber, &c. They were to have no compensation for their services unless sales were effected.

FRANK BOSTWICK.

Subscribed & sworn to before me this 23rd day of September, A. D. 1868.

D. W. JACKSON,
United States Commissioner, Northern Dist. of Illinois.

I, D. W. Jackson, United States commissioner of the northern dist. of Illinois, do hereby certify that the foregoing deposition of Frank Bostwick was taken before me, at my office, in the city of Galena, on the 23rd day of September, A. D. 1868, for & on behalf of the defendants, to be used on the hearing of said cause; that the witness was first duly sworn according to law, and the questions propounded to the witness were first reduced to writing & read over to the witness, and his answers thereto reduced to writing in the presence of the witness, and after said deposition was taken the same was read over to the witness and signed by him, and that I have attached to this deposition Exhibit "A," referred to by said witness, and that on the taking of said deposition A. L. Cummings, esqr., solicitor for complainant, appeared for and on behalf of complainant and cross-examined the witness, and M. M. Cothren, esqr., solicitor for defendants, appeared and examined said wit-
77 ness in chief.

Dated Galena, September 23d, A. D. 1868.

D. W. JACKSON,
United States Commissioner of the Northern District of Illinois.

EXHIBIT "A."—D. W. JACKSON, *Comm'r.*

This contract, made the day of , in the year of our Lord one thousand eight hundred and , between , part of the first part, and , part of the second part, witnesseth as follows:

First. The said part of the first part, in consideration of the sum of dollars, to be paid to the said part of the first part, in the city of New York, and of the covenants to be performed by the said part of the second part, as hereinafter expressed, hereby agree to sell to the said part of the second part all

with the privileges and appurtenances thereunto belonging.

Second. The said part of the second part, in consideration of the covenants herein contained, on behalf of the said part of the first part, agree to purchase of the said part of the first part the above-described land, and to pay for the same to the said part of the first part or legal representatives, in the said city of New York, the said sum of dollars, lawful money of the United States, in manner following, that is to say: , with interest, to be computed from the date of these presents, at and after the rate of per centum per annum on the whole sum that shall be, from time to time, unpaid, and to be paid annually, both principal and interest to be paid in the said city of New York; and also, that will, so long as any part of the principal or interest of the said consideration-money remains unpaid, well and faithfully, in due season, in each and every year, pay, or cause to be paid, all taxes and assessments,
78 ordinary and extraordinary, that may, for any purpose whatever, be levied or assessed on said premises, or on this contract, and that will not commit, or suffer any other persons to commit, any waste or damage to the said lands or the appurtenances.

Third. The said part of the first part, further covenant and agree with the said part of the second part, that upon the faithful performance, by the said part of the second part, of the covenants and agreements by , to be performed, and upon the payment of the several sums of money above mentioned, and the interest thereon, at the times

and in the manner and at the place above-mentioned, to the said part of the first part; that thereupon the said part of the first part will well and faithfully execute and deliver a deed for the said premises, bearing even date herewith, with covenants against own acts only of the above-described premises, with the appurtenances, and not otherwise.

Fourth. It is further mutually covenanted and agreed, by and between the said parties hereto, that the said part of the second part may immediately enter on the said land, and remain thereon, and cultivate the same as long as shall fulfill and perform all the agreements hereinbefore mentioned on part to be fulfilled and performed, and no longer; and that if shall, at any time hereafter, violate or neglect to fulfill any of said agreements, shall forfeit all right or claim under this contract, and be liable to the said part of the first part for damages, and shall also be liable to be removed from the said land in the same manner as is provided by law for the removal of a tenant that holds over after the expiration of the time specified in his lease. And it shall be lawful for the said part of the first part, at any time after the violation or non-fulfillment of any of the said agreements on the part of the said part of the second part, to sell and convey the said
79 land, or any part thereof, to any other person whosoever; and the said part of the first part shall not be liable in any way, nor to any person, to refund any part of the money which may have received on this contract, nor for any damages on *on* account of such sale. And it it is hereby expressly understood and declared that time is and shall be deemed and taken as of the very essence of this contract, and that unless the same shall in all respects be complied with by the said part of the second part, at the respective times and in the manner above limited and declared, that the said part of the second part shall lose and be debarred from all rights, remedies, or actions, either in law or equity, upon or under this contract.

Fifth. This contract is hereby declared to be binding on the respective representatives of the parties hereto.

In witness whereof the parties to these presents have hereunto set their hands and seals the day and year first above written.

Sealed and delivered in the presence of—

W'm C. Bostwick, esqr., of Galena, Illinois, is authorized to receive and receipt for the first payment on this contract; all subsequent payments to be made to Frederick Bronson, in the city of New York.

Stipulation as to letters as evidence.

It is hereby stipulated by and between the parties, by their respective solicitors, that the letters marked 1, 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, & 36, and indorsed by D. W. Jackson, comm'r, are letters signed by F. Bronson, and that the same, and each of them, may be used in evidence upon the hearing of the cause, providing the court shall adjudge and determine that they, or any of them, are receivable in evidence; it being understood that they are subject to all legal objections.

It is also stipulated that the letters purporting to be signed by
80 Elias L. Smith, marked & indorsed by the commissioner, numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, each contains the signature of the said Elias L. Smith, and that he now is the acting legal adviser of Frederick Bronson.

It is further stipulated that this stipulation shall be attached to the deposition of Frank Bostwick this day taken by D. W. Jackson, commissioner, and that the said deposition may be read in evidence upon the hearing of the cause in which it is taken, the same as though a commission had been taken out and directed to the said commissioner.

Dated September 23d, 1868.

A. L. CUMMINGS,
Sol'r for Complainant.
M. M. COTHREN,
Solicitor for Defendants.

The following is a copy of the note at foot of Torney contract, referred to in the following correspondence:

William C. Bostwick, esqr., of Galena, Illinois, is authorised to receive and receipt for the first payment on this contract; all subsequent payments to be made to Frederick Bronson, in the city of New York.

The following correspondence will explain itself.

Correspondence between Bronson & Bostwick.

GALENA, *February 9th*, 1860.

FREDERICK BRONSON, Esqr., *New York.*

DEAR SIR: * * * * * * *

My attention was naturally arrested by the note at bottom of the contract of Tormey, and if it is to be interpreted as an intimation that a withdrawal of my agency is contemplated, it would cause me not less surprise than pain, not so much by any means from the pecuniary consideration connected with it, as from the implied dissatisfaction on your part with the manner in which I have transacted your business; and it occasions the more surprise that I have always endeavoured to attend with fidelity and promptness to your business and interests, and
81 have never before had any intimation whatsoever from you that you were not entirely satisfied. I am wholly at a loss to conceive wherein I have given dissatisfaction, or failed to do all that was necessary to do, or could be done under the particular circumstances of any case involving your business or interests in my hands. If, however, I am mistaken in this regard, I pray you to state to me candidly wherein I have failed to meet your expectations or views in this behalf. I have a great deal of business on my hands, and am sometimes hard pressed for time, and may not sometimes have been so prompt or explicit in my correspondence as you may have considered desirable; but no other claims upon me have had precedence over yours, and I have always aimed to give as much of my attention and time to your business as it seemed possible for me to do, or as it seemed to me necessary really for me to do. I could have been often, if time and other engagements had permitted, more particular, specific, & elaborate, no doubt; but I always supposed that I made myself intelligible, and that you would, considering that my time was wholly occupied, make all due allowance for me, and seeing that I was endeavouring to serve you faithfully and to the best of my ability. * * * * * * * *

Yours, &c.,

W'M C. BOSTWICK.

NEW YORK, *February 15th*, 1860.

WM C. BOSTWICK, Esqr., *Galena, Ill's.*

DEAR SIR: The memorandum at the foot of Tormey's contract I have recently put on all my land contracts to repel the construction lately sought to be put on it, that the first or other payments, if received by the agent, is an implied waiver of the claim for exchange, and of the stipulation in the body of the contract, that the money is to be paid to me in the city of New York. In other words, it is but a repeti-
82 tion of the clause in the contract, as applicable except the first payment. As to the other payments, the risk of the payment and the exchange is to be borne by the buyers of the land. I was quite surprised and sorry that it should have received the interpretation you put upon it, which is entirely erroneous, and I was not aware that I had not sent you any contract since the question was raised, making the note pertinent and proper. * * * *

Yours, truly,

F. BRONSON.

Stipulation as to above correspondence.

It is hereby stipulated by and between the parties, by their respective solicitors, that the within and foregoing copies of letters shall be used on the hearing of the case of Bronson vs. Chappels in the circuit court of the United States for the district of Wisconsin, subject to objection by either party, unless the originals shall be produced, in which case they shall be used subject to objection. It is further stipulated that the said copies & this stipulation shall be attached to the deposition of Frank Bostwick by the commissioner.

Sept. 23, 1868.

A. L. CUMMINGS,
Solicitor for Complainant.
M. M. COTHREN,
Solicitor for Defendants.

In accordance with the foregoing stipulation this paper is attached to the deposition of Frank Bostwick, taken before me this 23rd day of September, 1868.

D. W. JACKSON,
United States Commissioner North'n Dist. of Illinois.

Letters of F. Bronson to W'm C. Bostwick.

No. 1.—D. W. JACKSON, *U. S. Commissioner.*

NEW YORK, *March* 3, 1865.

WM C. BOSTWICK, Esqr.

DEAR SIR: I have just received your letter of the 24th. In this letter you say Messrs. Chappel ask for a deed; in your last it
83 was only for an extension of the time of payment, with an option to pay earlier. I have answered that letter, on which I hope you will be able to conclude the arrangement. If they will not carry out the contract, & insist on a deed & mortgage, please let me know. The mortgage will put him to an unnecessary expense of drawing & recording & stamp, which are always paid by the mortgagee, for whose benefit they are made, without any additional security to them. Still, if

they insist on a deed, I am willing to assent to their request, & would even yield the deferred payments reluctantly, and rather than lose the sale.

The copper lands near Mineral Point, of which I give you a list below, are for sale. I originally held an undivided interest. A partition was made, which I thought unjust & did not ratify, & have since purchased the whole under a tax sale; hence my deed will be a quitclaim. The lands are quite valuable. Can you forward me applic'n for them?

Yours, very truly,

F. BRONSON, *Ex.*

No. 2.—D. W. JACKSON, *U. S. Commissioner.*

NEW YORK, *February 15th*, 1860.

WILLIAM C. BOSTWICK, Esquire, *Galena, Illinois.*

DEAR SIR: The memorandum at the foot of Tormey's contract I have recently put on all of my land contracts to repel the construction lately sought to be put on them, that the first or other payments, if received by the agent, is an implied waiver of the claim for exchange, and of the stipulation in the body of the contract, that the money is to be paid to me in the city of New York. In other words, it is but a repetition of a clause in the contract, as applicable to all except the first payment. As to the other payments, the risk of the payment and the exchange is to be borne by the buyer of the land. I was quite surprised and
84 sorry that it should have received the interpretation you put upon it, which is entirely erroneous, and I was not aware that I had not sent you any contract since the question was raised making the note pertinent and proper.

I have heretofore called your attention to the Legate contract, by which he made himself liable for the amount invested, and stipulated to close the business in five years, &c. The mortgage was given subsequently to the contract, not only to secure the deficiency on the proceeds of the lands, but also the repayment of a large sum of money, $5,577 51 & interest, which the major appropriated to his own use. Many of the parties to this contract are dead, and it is very important that it should be enforced by a foreclosure of the mortgage, and the recovery of the large balance due on both of the above accounts, i. e., the deficiency and the money mal-appropriated. It has always seemed to me that, before I could foreclose, I should be obliged to ascertain the deficiency by the actual sale of all the land; the amount of the money and interest is of course easily liquidated, and if the latter amount will, as I suppose is the case, take all the mortgaged premises to pay, I wish to ascertain whether, in your opinion, it is worth while to wait any longer, or whether I should proceed at once. The bond was dated in June, 1841. I wish you would see that all the taxes are paid, so that my security shall not be lost by reason of their non-payment; and if you think that the debt of $5,577 51, with interest from June, 1841, will take all the farm, you may proceed at once in my name as executor of Arthur Bronson. The only reason that this foreclosure has been delayed has been that I might also proceed against it for the deficiency in his contract; but if the security is only sufficient to cover the debt for money received by Major Legate, it is of no use to wait longer.

I think you have copies of the contract and of the bonds and
85 mortgage; if not, I will send them to you.

Yours, truly,

FREDERIC BRONSON, *Ex.*

POST CRIPT.—The contract of Thomas Tormey is received, with the draft for $188, as stated in yours of the 9th instant, which, with $80 retained by you for your commissions on the sales to C. C. Collins and Thomas Tormey, making together $268, I have credited for the first payment on the contract of Thomas Tormey. In the case of Watchler you can settle with him on the terms you say he claims, and I do not wish you to remit any more than you receive from him. When you settle with him, please send a statement of his account as you make it up. When I made up the account I could only go by my books, as I did not know at what dates the payments were made to you.

F. B., *Ex.*

No. 3.—D. W. JACKSON, *U. S. Commissioner.*

NEW YORK *Feb'y* 16, 1860.

W'M E. BOSTWICK, Esqr.

D'R SIR: I have just rec'd a letter from Nelson Dewey, esqr., in which he says that Mr. Tho's Buckingham, of Dodgeville, wrote to him on the 4th inst. inquiring the price, &c., of N. E. ¼ sec. 12, T. 6., R. 4. E., Iowa county, Wis., and that Mr. L. B. Stroms, of Monroe, Green Co., Wisconsin, had also written, inquiring price, &c., of S. W. ¼ sec. 12, T. 2, R. 7 east, in Green Co.

I have replied to Mr. Dewey, saying that they are for sale, and requesting him to ask the gentlemen to call on you. Will you inform yourself of the value of those lots, so that if the parties offer their full value you can report their offers to me, with your opinion and advice whether I ought to accept it. They are "Legate lots," so called.

Yours, truly,

F. BRONSON, *Ex.*

P. S.—In your letter of Feb'y 9, 1860, you say, "I beg leave to call your attention to the offer of Kuleman, inclosed to you a short time since, for a portion of land in 6, 2 west." I find no such offer in any of your letters. Please give me the particulars.

86 No. 4.—D. W. JACKSON, *U. S. Commissioner.*

NEW YORK, *Nov'r* 14, 1865.

W'M C. BOSTWICK, Esqr.

DEAR SIR: I have your letter of the 10 inst. Yielding to your advice in the matter, I have concluded to let the Smiths have the land upon the terms specified in their contract.

It occurs to me that these lands of mine are more valuable than the lands on the Minne. Central R. R., & yet they get higher prices for them.

I inclose the contracts.

Hoping that your health may be perfectly restored, I remain, truly, yours,

F. BRONSON.

P. S.—I am very frequently urged by the parties interested in the "Legate lands" to close the ac. by sales of the lands. I wish you would take some trouble in forwarding offers for them, including the lot in Galena. The Elk Grove farm I hope you will find a ready sale at about the price you mentioned, & a fair offer for the other lands.

Y'rs, truly,

F. B.

No. 5.—D. W. JACKSON, *U. S. Commissioner.*

NEW YORK, *Nov'r* 20, '65.

W'M C. BOSTWICK, Esqr.

DEAR SIR: I have your letter of the 17 inst. If Mr. Smith does not want the land, the N. E. 26 & S. W. ¼ 23, 6, 2 W., you may sell the former tract to Mr. Torney on the terms mentioned in your letter.

I am pleased to hear that you will give the Legate lands early attention.

Hoping the early & perfect restoration of your health, I am, very truly, yours,

F. BRONSON, *Ex.*

No. 6.—D. W. JACKSON, *U. S. Commissioner.*

NEW YORK, *May* 30, 1861.

W'M C. BOSTWICK, Esqr., *Galena, Ill's.*

87 DEAR SIR: Yours of the 24th was duly rec'd at my office in my absence, & in reply I inclose herewith my contract of this date for the S. E. ¼ of 22, 6, 2 W., Grant Co.—consid'n, $1,600, payable, $50 cash; $250, June 20, '62; $400, June 20, '63; $400, June 20, '64; & $500, June 20, '65; interest annually, @ 7%. I have left, as suggested, the purchasers' names in blank, which you will please fill in, & return the counterpart, retaining & applying the 1st payment of $50, subject to my rule & understanding in similar cases, namely, that the payment of the remaining $30 for bal. of com's on the sale must be dependent on the fulfillment of the contract, which, if it falls through, the amount retained by you must be returned to me.

Yours, truly,

F. BRONSON.

No. 9.—D. W. JACKSON, *U. S. Commissioner.*

NEW YORK, *Oct. 28th*, 1865.

WILLIAM C. BOSTWICK, Esqr., *Galena Illinois.*

DEAR SIR: Your favor of the 25th inst. was received this morning, and agreeably to your request I herewith inclose my deed to Vellous Heath (assignee of Alex'r Miller) for the W. ½ of N. W. ¼ of S. 25, T. 6 N., of range 2 west, Grant County, which please deliver to Mr. Heath on his surrendering my contract with Miller, duly assigned, and paying $397 67, with interest from Jan'y 1, '65, at 10%, until received by me, first affixing a stamp to the deed at my expense.

The surrendered contract and balance due please remit to me. I am gratified at the assurance your letter gives me that my business unsettled in your hands will be "speedily disposed of."

Yours, truly,

F. BRONSON, *Ex.*

No. 10.—D. W. JACKSON, *U. S. Commissioner.*

NEW YORK, *Nov'r* 27, 1865.

W'M C. BOSTWICK, Esqr.

88 DEAR SIR: I have your letter of the 23 inst. I will accept the offer of John Vance for S. W. ¼ & S. ½ N. W. ¼ 21, 6, 2, 240 acr., at $15, & inclose herein my contract, $1,000 cash; $600, 26 Dec'r, 1866;

& balance in 2 eq. an. pay't, & int. 7%. I am sorry that you cannot put the price up to $17 50 or $20.

I have written about the Smith applic'n, authorizing you to accept Tormey's if Smith declines to purchase.

Yours, truly,

F. BRONSON, *Ex.*

No. 11.—D. W. JACKSON, *U. S. Commissioner.*

NEW YORK, *May* 24, 1865.

W'M C. BOSTWICK, Esqr.

DEAR SIR: I have been hoping every day to hear from you relative to the Chappel sale, and other matters still open.

Having advised some of the parties interested in the Legate lands of the sale, & of the prospect of a dividend, I am now in an awkward position, & hope you will expedite that matter as much as possible. Please close also the delivery of the other deeds on hand on receiving the balance due. I hope that you will be able to *affect* sales of the residue of the Legate lands on favorable terms soon. Please let me hear from you by the returning mail.

Y'rs, truly,

F. BRONSON, *Ex.*

No. 12.—D. W. JACKSON, *U. S. Commissioner.*

NEW YORK, *Oct.* 5, 1865.

W'M C. BOSTWICK, Esqr., *Galena, Ill's.*

DEAR SIR: In answer to your letter of the 2d instant, rec'd this morning, I herewith inclose my contract with Mr. Biron Gilman for N. ½ N. E. ¼ 19, 6, 2, 80 acres, in Grant County, Wisconsin, consideration, $1,200, which please deliver to Mr. Gilman on his executing the counter-
89 part and making the first payment, both of which you will send to me, first deducting your commissions on the sale.

Yours, truly,

F. BRONSON, *Ex.*

P. S.—I hope you will be able to raise the price of the unsold lands to $20, & send me offers accordingly. The Elk Grove farm I also commend to your early attention, as I wish to close that tract.

Y'rs, truly.

No. 13.—D. W. JACKSON, *U. S. Commissioner.*

NEW YORK, *Septem'r 16th*, 1865.

W'M C. BOSTWICK, Esqr., *Galena, Wis.*

DEAR SIR: I have your favor of 12th inst. enclosing bond & mortgage of Edward Chappel & others recorded, and returning unexecuted the contracts with Thomas Chapman, the reason for which is noted. I shall, of course, make no charge against you for preparing the contracts. Under the circumstances stated by you respecting George Pettis & his contract for E. ½ S. E. ½ 26, 6, 2, and with the expectation that he will make the payments you state he proposes to make next fall, I will wait, suggesting, however, that he make an earlier payment of part, if possible.

Yours, truly,

F. BRONSON, *Ex.*

No. 14.—D. W. JACKSON, *U. S. Commissioner.*

NEW YORK, *May 14th*, 1861.

W'M C. BOSTWICK, Esqr., *Galena, Ill's.*

DEAR SIR: In the examination of my tax lists for 1860, paid & rec'd this day from Nelson Dewey, esqr., I notice that Sam'l J. Davis, Alexander Miller, and Augustus Kuleman did not pay the taxes due on the lots contracted to them respectively, except Kuleman, who paid but a part, viz, N. ½ S. W. ¼, leaving the tax unpaid by him on the N. W. ¼ 27, 6, 2. Please collect and remit to me the amount due from each, as follows, with interest from May 7th instant:

90 Sam'l J. Davis, N. E. ¼ 12, 6, 4, 160 acres, Iowa Co.; contracted June 4, '60; $16 12, tax & com's.

Alex'r Miller, W. ½, N. W. ¼, 25, 6, 2, 80, Grant Co.; cont'd Nov. 3, '60; tax, treas. fees, & com's, 23 34, (apportioned.)

A. Kuleman, N. W. ¼ 27, 6, 2, Grant Co.; cont'd Aug. 20, '60; tax, treas. fees, & com'rs, 21 64, (apportioned.)

In y'r letter of 28 June, 1859, you say taxes in Wisconsin become a lien on the 1 Monday in Dec'r; hence the purchasers are ch'g'd with the foregoing taxes, & the am'ts will draw int. from May 7th inst., the date of pay't by Mr. Dewey.

Yours, truly,

FREDERIC BRONSON.

No. 15.—D. W. JACKSON, *U. S. Commissioner.*

NEW YORK, *May 2d*, 1861.

WILLIAM C. BOSTWICK, Esquire, *Galena, Illinois.*

DEAR SIR: I rec'd yesterday, & thank you for, your letter of the 27th ultimo. I accept the offer of Philander Wright, & inclose herewith my contract of this date in my own right, & as ex'r of Arthur Bronson, with him for the E. ½ N. E. ¼ of 29, 6, 2, Grant Co.; consid'n, $800, payable $50 cash, and the residue in 4 equal ann'l pay'ts from 1 Oct., 1861, int. @ 7% ann'lly. The counterpart, with the 1st pay't, less y'r comm's, please send to me, with the 1st pay't (less com'rs) due from Shuttleworth, who purchased the W. ½ of said ¼ section. I ack'd the receipt of the executed contract by Shuttleworth in my letter of the 8th ulto. For your reimbursement in the examination of the taxes of all the lands m'g'd by Major Legate to my bro. Arthur, & for the am't which you paid & found due for the tax of 1860 on a portion thereof, I inclose herewith my check of this date on the Bank of the Republic, of this city, for twenty-four $\frac{61}{100}$ dollars, (being $5 for services & $19 61 for the tax,) in accordance with your letter & voucher therein inclosed. The tax paym't you will please include & claim in the foreclosure of the m'g'e of Legate.

91 The statement inclosed in your letter, showing the am't due to me of $40 80 on March 1, 1861, from the trustees of the Baptist Church in Galena, is correct, & I notice what you say as to exchange. While I am desirous of receiving payments promptly from my debtors thro' whom you remit, I do not consider it just that the remittances to me should be based upon your bearing a portion of the exchange, as they are well aware that their payments are to be made to me in this city, without any contingencies, & at the times that their stipulations call. Any understanding, however, between you & they as to the division of exch'ge, I of course cannot object to, but shall expect them in all cases to remit

to me at the times, and as their agreements designate. In this case of the pay't to you from the trustees you may exercise your own discretion in its remittance, consistent with my receiving it within a reasonable time.

I rec'd with your letter the contract of Augustus Kuleman with me, dated June 3, 1857, for S. W. ¼ of 27, T. 6, 2 W., Grant Co., cancelled. To show the substance, in this connection, of the transaction of Kuleman with me, I will state in this letter that he applied to and did purchase of me, June 3, 1857, the S. W. ¼ of 27, 6, 2; subsequently, and before the contract became due, he desired that I should give him title to the S. ½ of the said quarter-section; &, to accommodate him, and as over one-half of the consideration thereof had been paid, I acceded to his request, & inclosed my deed to him in my letter to you of July 31, 1860; after which he made another application to me to purchase the S. E. ¼ of said section; but before and while he was considering the stipulations of my acceptance upon the subject, as contained in my letter to you
92 of Oct. 27, '60, I rec'd, thro' you, another application from him, revoking his offer to purchase the said S. E. ¼, & substituting therefor the N. E. ¼ of the same section, which I accepted substantially as stated in my letter of Jan'y 28, '61, and sent to you my contract, as therein stated, the consideration of which is $2,490 15, as follows:

The N.W. ¼ of 27, 6, 2, @ $12 p'r acre	1,920
Balance due Aug. 20, 1860, on the N. ½ of S. W. ¼ of said section, the south half of which was deeded by me to him, as above	570 15
Making the consideration as above	$2,490 15

This contract, dated August 20, 1860, I have rec'd, with your letter of the 27th ultimo, duly executed by Kuleman, and, after the deduction of your com's on $1,920 out of the 1st pay't of $100, including 8 ms. int. on the $100, leaves a balance in your hands belonging to me of $8 65, as per statement in your letter.

*I suppose that, as I hold the original contract of Kuleman, of June 3, '57, the assignment thereof to me endorsed thereon is conclusive, notwithstanding the contract is of record; but as you say you have drawn a separate assignment of the contract, & sent the same to Lancaster for record, you may, when rec'd, send it to me. The certificate of the register of deeds of Grant Co., showing that no incumbrances have been put upon the N. ½ of the quarter-section embraced therein, I have also rec'd. As Kuleman has shown to your satisfaction that the taxes have been paid for 1857, '8, '9, & '60, on the N. ½ S. W. ¼ of the land embraced in my contract of Aug. 25, '60, with him, I shall be content, and not require further evidence of this payment. I am very much obliged to you for the care and trouble you have taken in connection with this & my other business alluded to, which is satisfactory to me and in accordance with my instructions to you.

93 Yours, truly,

F. BRONSON.

*The assignment of Kuleman to me of my contract was properly recorded, & necessary in order that the record, which is evidence of the contract, should also furnish evidence of its assignment to me.

I concur in your views of our national troubles. The strong arm of the government should reach all the chief rebels, and, if an irresistable army is exhibited in the revolting States, beginning with Virginia, the won-

der will be that so few rebels can be found; & if this exhibition of force is accompanied with a sacred regard of private property, as it ought, it need not necessarily, & probably will not, leave animosities behind. The pride of Virginia or of any other State will not be too much humbled by being compelled to obey the laws by the armed power of the United States righteously exercised in sustaining their quiet and good government.

F. B.

No. 16.—D. W. JACKSON, *U. S. Commissioner.*

NEW YORK, *Dec'r* 27, 1860.

W'M C. BOSTWICK, Esqr.

DEAR SIR: I rec'd this morning your favour of the 27 int., & regret very much to hear of the accident you have met with, & hope that you may have a speedy recovery.

I have the draft inclosed in your letter for one hundred and eighty dollars on the Suffolk Bank of Boston, which I have credited on account of the first payment of three hundred dollars under contract with John Perkins for the S. ½ N. E. ¼ 19, 6, 2 W., 80 acs., in Grant Co. As the exchange between this city & Boston is merely nominal, I have given Mr. Perkins credit for the full $180 as above. The remaining one hundred and twenty dollars of the first payment in your possession, after deducting thereout $40, (your commissions,) you may remit to me by a good sight draft on a bank in this city; and as you informed Mr. Perkins at the time he made his offer for the land, that the exchange would be 1½%, you may charge to me and deduct thereout the difference between that rate and the rate at the time of your making the remittance, & at the same time enclose to me the counterpart of the contract executed by Mr. Perkins.

94

Davis, you say, will pay in gold, which I should be willing to accept, provided he will consider the transmission of it by express at his risk until rec'd by me. If he makes his remittance in this way, you will not give him a receipt for me until I advise you of having rec'd the money.

I suppose the real exchange between the West & this city is nearly if not quite par, as the West is selling more *that* it is buying. The nominal exchange merely shows the depreciation of your currency, or, in other words, the depreciation of State bonds, on which your currency is based, and that depreciation is in a manner attributed to the large number of bonds abstracted from the Indian department & forced on our market.

There is no propriety in my paying for this depreciation. The people should insist on having a currency equal to specie; but as Mr. Perkins may perhaps think he stipulated as to the rate of exchange, (which was not probably the case,) & as the amount is small, I will bear that loss. The express charges for bearing gold here would not, I think, exceed ½ per cent., and exchange can be probably bought for gold at or near that rate.

Yours, truly,

FREDERIC BRONSON, *Ex.*

No. 17.—D. W. JACKSON, *U. S. Commissioner.*

NEW YORK, 12 *Dec.*, 1855.

W'M C. BOSTWICK, Esqr., *Galena.*

DEAR SIR: Your favor of the 6th instant is at hand, with a draft for

$77 03 for the last instalment & interest due on the contract of John Berry.

95 There remains unpaid the following charges against his contract:

*March 1, '54, paid taxes 1853 on E. ½ of N. E. ¼ 21, 3, 1.....	$5 81
" 3, '55, " do. 1854 " same	5 95
	$11 76

(*July 15, '56, rec'd of Benedict, $5 81. He took tax receipt to collect the $5 95 of town treasurer.)

I enclose my deed of this date to Lewis Benedict for E. ½ of N. E. ¼ sec. 21, T. 3, R. 1 E., 80 acres, in Lafayette Co., consideration, $300, which you can deliver to him on his surrendering my contract given to John Berry for the same tract duly assigned to said Benedict, and on his paying the amount of the above charges.

I have looked over your letters, and all that I find relating to a contract from Samuel L. Borah is in yours of the 28 Nov. last, in which you allude to his application for W. ½ of N. E. ¼ of sec. 3, T. 6, R. 3 W. I do not find this lot on my list, which is probably the cause of my overlooking it in answering that letter. If the offer was intended for W. ½ of N. E. ¼ of 30, T. 6, R. 3 W., which comes the nearest to it, I will accept of his offer on being so advised by you.

Respectfully, y'r ob. s't,

FREDERIC BRONSON.

No. 18.—D. W. JACKSON, *U. S. Commissioner.*

NEW YORK, 27 *March*, 1856.

W'M C. BOSTWICK, Esqr., *Galena.*

DEAR SIR: I have received your favor of the 20 instant, with the contract of Joseph Jarratt and a draft for $257 84, which, with $45 50 retained by you for your com's on the sale to him, making $303 34, I have credited for the first payment on the contract.

I am obliged to you for the information respecting Gov'r Dewey, which I consider strictly confidential.

The Murray lands to which you refer do not belong to Col. Murray, of this city, but to Lord Murray, of England, as I am informed.

He is now, or was lately, English minister to the court of
96 Persia. James S. Wadsworth, of Geneseo, in this State, is his brother-in-law, and may have charge of the lands, or, if not, he can probably inform you who has, and I would advise you to open a correspondence with him.

Respectfully, y'r ob. s't,

FREDERIC BRONSON, *Ex.*

I am particularly desirous of closing up the sale of the Legate lands, and I hope you embrace every opportunity you can to effect sales.

No. 19.—D. W. JACKSON, *U. S. Commissioner.*

NEW YORK, *July* 31*st*, 1860.

WILLIAM C. BOSTWICK, Esqr.

DEAR SIR: On my return to this city this morning, after an absence

of two weeks, I find your letters of the 19th, 20th, & 26th inst. I will accept conditionally the offer of Henry Probst, as contained in your letter of the 19th instant, for the S. W. ¼ of 19, 6, 2 W. Mr. Field, in yours of the 26th inst., applies for the E. ½ N. W. ¼ of said section, but you think he will take the whole of the N. W. ¼. Now, if Mr. Field will take the N. W. ¼ of said section at the same time of Mr. Probst taking the S. E. ¼, I will have no objection to selling the land at the price and on the terms mentioned in your letters, and it is only on the condition of the sale of the N. W. ¼ to Mr. Field that I shall consent to sell the S. W. ¼ to Probst, and with this understanding I enclose herewith my contracts of this date, one with Henry Probst for the S. W. ¼ of 19, 6, 2 west, Grant Co., Wis., 160 acres; consid'n, $1,600, paybl., $320, cash; $320, March 1, '62; $320, M'ch 1, '63; $320, M'ch 1, '64; & $320, M'ch 1, '65; and the oth r of the same date for the N. W. ¼ of same section, consid'n, $1,600, payable, $533 33, cash; $266 67, M'ch 1, 62; $266 66, M'ch 1, '63; $266 67, M'ch 1, '64; & $266 67, M'ch 1, '65, to be delivered only on their simultaneously making to you their respective payments, and executing and delivering their respective contracts. The contracts, with the cash payments, please inclose to me, first deducting your
97 com's. Should Mr. Probst decline to take the S. W. ¼, I will have no objections to your delivering to Field my contract for the N. W. ¼, on his compliance with the terms therein mentioned; but not vice versa.

As the objections in my letter of the 14th June last, respecting the sale of the S. ½ of N. E. ¼ of 19, 6, 2 west, Grant Co., Wis., to Mr. Harmaine H. Wefel, have been obviated by the reasons stated in your letter of the 19th inst., I accept his offer, as contained in your letter of June 8th last, and inclose herewith my contract of this date with Mr. Wefel for the said tract, consid'n, $800, payable, $160, cash; $160, M'ch 1, '62; $160, M'ch 1, '63; $160, M'ch 1, '64; and $160, M'ch 1, '65, which you may deliver to him on the execution of the counter-contract, & receiving the first payment, which please enclose to me with the contract, less your com's on the sale. Considering the long terms of payment granted to Mess. Probst, Wefel, & Field, I think the rate of interest ought to be 10% per annum, and I hope you will use your best endeavors to get their consent to this rate. You will please to take notice, that as I have left the rate of interest blank in the contracts, not to deliver them until you have inserted the word seven if you cannot induce the parties to pay 10%.

In reply to your letter of the 20th inst., in relation to the application of Kuleman for a deed, I have to say that it is contrary to my practice to give a deed for a piece of land before the full consideration-money is paid, except where my contract might call for more than one. Mr. Kuleman, before disposing of the south half of his quarter-section, most certainly knew that he could not, by the terms of the contract, claim title to the quarter-section until its terms had been complied with, and the purchaser from him should also have known the terms of the contract, and on what conditions he could expect to receive his title from Kuleman; but I am willing to make this case an exception to
98 my rule in such matters, and, under the circumstances stated by Mr. Kuleman and yourself, inclose herewith my deed of this date, in my own right and as ex'r of Arthur Bronson, to Mr. Augustus Kuleman for the S. ½ of S. W. ¼ of sec. 27, T. 6, R. 2 west, 80 acres, Grant Co., consid'n, $800. I authorize the delivery of this deed only when the following conditions shall have been complied with, that is to say, he is to pay $300 down and $3 for my trouble and expense in preparing this

deed, and his receipt of the deed for the S. ½ of the said quarter-section indorsed on the contract; also, his admission on a separate piece of paper, that the amount due on my contract with him, dated June 3, 1857, & past due, amounts to $851 93 on June 3, 1860, (as per statement below,) and that he agrees to pay interest thereon at the rate of 10% per annum from June 3, '60, and that he has received from me my deed for the S. ½ of the S. W. ¼ of sec. 27, T. 6 N., R. 2 west, 80 acres, in Grant Co., Wisconsin. I will thank you to be particular in drawing this paper for him to execute, and, when executed, and his receipt on the contract for the deed & the payment of $300, & $3 for the drawing, &c., of the deed, (which, with his admission, you will mail to me,) I hereby authorise you to deliver the inclosed deed to him; otherwise return it to me. His ac., as it now stands on my books made up to June 3, '60, is as follows:

1857.			
June 3.	To contract of this date for S. W. ¼ sec. 27, T. 6, R. 2 W., acres, Grant Co., for $1,600, pay'bl., $534 on delivery, & residue in two eq'l ann'l pay'ts, 7% int.		$1,600
1857.			
July 24.	By cash		534
			1,066
	To interest on $1,066, 12 mos., to June 3, '58, @ 7%		74 62
			1,040 62
	" do. " $1,140 62, 12 " " " 3, '59, "		79 84
			1,220 46
1858.			
July 22.	By cash	$400	
	" int. on $400 from July 22, '58, to June 3, '59, 10 m. 12 d	24 26	
			424 26
			796 20
	To int. on $796 20, 12 mos., to June 3, 1860		55 73
	" amount due, with interest from June 3, 1860		$851 93

99 If he pays $300, as proposed, the account will be—

1860.		
June 3.	To amount due	$851 93
"	" int. on $851 93—say to Aug. 20, '60, 2 m. 17 d'ys, @ 10%	18 22
		870 15
1869.		
Aug. 20.	His proposed payment of	300 00
1860.		
Aug. 20.	To amount due, with interest from this date @ 10%	$570 15

My books show that the taxes on E. ½ of N. E. ¼ of 34, 6, 3 E., for the years 1838, 1839, 1840, 1841, & 1842 have been paid. In your letter of 25th June you say "that the S. E. of N. E. ¼ was sold for taxes Debember 17, '42." Please inform me for what year's taxes it was sold, and I will look up the receipt. The taxes of 1855, on the whole of the E. ½, have been paid, per receipt I now hold.

Yours, truly,

F. BRONSON, *Ex.*

P. S., AUGUST 6, 1860.—Your letter of 29th ultimo was rec'd at my office on the 3d instant, and in reply I also inclose my contract dated August 3, 1860, with Mr. John Dinsdale for the E. ½ N. W. ¼ 25, 6, 2 west, Grant Co., 80 acres, consid'n $800, $200 cash. Although you do not state how much time Mr. D. will require to pay it up, I have given him till January, 1865, as recited in the contract, in view of receiving from him 10% interest. Of course, if he will not allow it, you will write in the word seven, and return to me the counterpart, with cash payment, taking out first your commissions.

The reason that this letter was not sent on the day of its date was, that the deed to Kuleman had to be ack'd by my wife, who is absent from the city; hence the delay. In the deed to Kuleman you will perceive that there is no county clerk's certificate; that the justice was authorized to act. To obtain it it would have been necessary to drive 8 miles, and that could not be done until my wife returned from Newport, about a fortnight hence. Besides, the title on the record is
100 in my name as executor, and her signature is not strictly necessary, though I hold an interest of half in the land; it is not shown in your records, according to my present recollection.

Yours, truly,

F. BRONSON, *Ex.*

No. 20.—D. W. JACKSON, *U. S. Comm'r.*

NEW YORK, 27 *July*, 1857.

W'M C. BOSTWICK, Esqr., *Galena.*

DEAR SIR: Yours of the 18th instant was duly rec'd, with the inclosures, as stated. The draft for $534, together with $80 retained by you for commissions, I have credited on my contract with Augustus Kuleman, being the amount of the first or cash payment.

The reports of Mr. McNair are the least satisfactory of any I have ever rec'd, unless he intends to make them out more full and complete when he has got through with his examinations. They are all written with pencil, and on detached pieces of paper, and the last one on a very small strip, without any date or signature.

When you retain the amount paid Mr. McNair, & for taxes on lot in Galena, & also your charges & expenses for trip to Wisconsin, I wish you to make out two separate bills, one for all that relates to the Legate lands, and another for the other lands, & receipt them both, so as to give me separate vouchers.

Yours of the 21st is also rec'd, with the inclosures, as stated, and for the draft for $268. I have credited $263 on the contract of Warren Gray, & $5 for forfeit money paid by Blanchard. I do not alter my contracts by granting extensions, but if Mr. Gray pays, as he proposes, I shall not probably take any steps to enforce his contract without giving him previous notice.

JULY 30, '57.—I enclose my contract with Andrew Reed for S. W. ¼ sec. 4, T. 1 N., R. 4 E., 160 acres, in Lafayette Co., dated 29 July,
101 1857, consideration, $1,120, payable, $200 on delivery, & the residue in 4 equal ann'l payments from date, with interest at 7%, which you can deliver to him on his making the cash payment & executing the counter-contract, which please return to me, with the cash payment, as usual. This is in accordance with his offer as stated in yours of the 10th instant.

Respectfully, y'r ob. s't,

F. BRONSON, *Ex.*

No. 21.—D. W. JACKSON, *U. S. Commissioner.*

NEW YORK, *July 17th*, 1861.

W'M C. BOSTWICK, Esqr.:

DEAR SIR: Yours of 10th inst. inclosing d'ft on Market Bank, of this city, for $53 85, with a statement, and John McDermott's contract, is received, and, as advised by you, I have credited McDermott's contract with payment of $50 retained by you on ac. com's. I have also, in conformity with your statement, credited Craven Shuttleworth with payment of $50, W'm Bailey and others, trustees, $40 80, & Augustus Kuleman, $104 65, noting commissions retained by you, and have charged Guy Richards $5 00 for bill adv'g p'd and ch'g'd by you.

If these contracts fall through & the land reverts, the commission to be refunded to me.

Y'rs, truly,

F. BRONSON, *Ex.*

No. 22.—D. W. JACKSON, *U. S Commissioner.*

NEW YORK, *Jan'y* 14, 1860.

W'M. C. BOSTWICK, Esqr., *Galena, Ill's.*

DEAR SIR: Your favour of the 6th instant, enclosing draft of the Bank of Galena on the Market Bank of this city, for seven hundred and sixty $\frac{28}{100}$ dollars, has been received, and the proceeds thereof will be applied as directed.

I shall at once prepare a deed for Mr. Xavier Wachtler, and send it to my brother Oliver, who is now in Florida, to be executed by
102 himself and wife, and as soon as he returns it to me I will mail it to you.

I accept of the offer of Mr. Thomas Tormey, as stated in your letter as above, and inclose herewith my contract in my own right, and as executor of A. Bronson, of this date, with Mr. Thomas Tormey, for the E. ½ of N. W. ¼ 26, 6 N., R. 2 west, 80 acres, in Grant County, Wisconsin; consideration, eight hundred dollars, payable, $268 on the delivery of the contract; $133, June 1, 1861; $133, January 14, '62; $133, January 14, '63; and $133, January 14, 1864; & that the deferred payments might be in even figures, I have made the 1st payment in the contract to be $268, which is but a trifle over ¼d of the purchase-money, as you will perceive.

I notice that you did not deduct from the cash payment of C. C. Collins your commissions on the sale to him; you can take them out of the payment to be made by Mr. Tormey; I prefer that they should be taken out of this payment as it belongs to the same interests.

I should not be willing to release Mr. Reid from the purchase of the S. ½ of S. W. ¼ 4, 1, 4 E., as he has proposed to you. I will, however,

alter his contract so as to give him the E. ½, & releasing him from the W. ½ upon the terms which he proposes to make the other arrangement. I perceive by my report that about 40 acres of the S. E. corner is wet bottom land, whereas the N. ½ is good rolling prairie.

I may have made the three last instalments payable at a different date from what Mr. Tormey intended; if so, you can endorse on both contracts that the last three payments are to be made annually, from June 1st, 1861.

Yours, truly,

F. BRONSON, *Ex.*

No. 23.—D. W. JACKSON, *U. S. Comm'r.*

NEW YORK, *Septem'r* 1, 1865.

W'M C. BOSTWICK, Esqr., *Galena, Wis.*

103 DEAR SIR: Your favor of 29th ulto. is received, with the enclosures named by you, to wit, your d'ft on Messrs. Gilman, Son & Co., of this city, for $943 03, with statement as to credits therefor; also contract of Sam'l J. Davies, assigned & surrendered, & contract of Tho's Tormey, surrendered; and contract for E. ½ S. W. ¼ 25, 6, 2, executed by John Dinsdale. The clerk's certificates in re Tho's Tormey, Sam'l J. Davies, & D. C. Morris, with the affidavits respecting assignment of contract of Davies, are satisfactory.

In accordance with your statement, I have applied $452 38, with charges as paid by you, $8 50—total, $460 88, as payment in full on contract of Sam'l J. Davies; also $115 65, as payment in full on contract of Andrew Reid; $175 00, on acc't on contract of John Perkins, (or is it John G.?) leaving unpaid $12 96 with int. 8% from March 1, '65; and $200 as cash payment on contract of John Dinsdale.

I regret to learn of your illness, but trust it will be of brief duration, and that you will soon be fully restored to health.

Yours, truly,

F. BRONSON.

No. 24.—D. W. JACKSON, *U. S. Commissioner.*

NEW YORK, *Decem'r 27th*, 1864.

W'M C. BOSTWICK, Esqr.

DEAR SIR: I have your favor of 21st in't, enclosing your d'ft on Messrs. Gilman, Son & Co., of this city, for $920 00, which, as advised by you, I have applied as follows, viz: $100 to credit of Craven Shuttleworth on his contract for W. ½ N. E. ¼ 29, 6, 2; $320 to credit Alex. Miller on his contract for W. ½ N. W. ¼ 25, 6, 2; $500 to credit Philander Wright on his contract for E. ½ N. E. ¼ 29, 6, 2, interest to be computed to date received here.

Awaiting your promised reply to my letters of 15 & 23, I remain, very truly, yours,

F. BRONSON.

104 No. 25.—D. W. JACKSON, *U. S. Commissioner.*

NEW YORK, *October 27th*, 1865.

WILLIAM C. BOSTWICK, Esqr., *Galena, Ill's.*

DEAR SIR: I have this morning received your letter of the 22nd instant, advising me that the offer of Peter Finnegan and Henry Dank-

leff, reported in your letter of the 14th inst., for the W. ½ of S. E. ¼ of 21, 6, 2, was at $15 per acre, and herewith I beg leave to hand you my contract with them for the said land, of this date, consid'n, $1,200; payable, $70 cash, & the residue in 3 equal annual payments; annual int. @ 7%. You are aware that I usually require either a ⅓d or ¼ of the consideration to be paid down; but, as you say the parties will immediately put improvements on the land, I have concluded to send the contract as stated; but you will please not deliver the contract until improvements shall have been made on the land satisfactory to yourself, bearing in mind that the main condition of sale is, the improvements are to be made immediately. As to the offer of Mr. Thomas Tormey, reported in your letter of the 16th, I beg to refer you to my letter of Sept. 21st last, wherein I inclosed you my contract for Jacob & Alex'r Smith for the same land Mr. Tormey applies for, viz, N. E. ¼ of 26, 6, 2. If the Mess. Smith have not closed the bargain by the time you receive this, you may offer the same land to Mr. Tormey (to whom I have sold the adjoining N. W. ¼) at $17 50 an acre, which, if he declines to accept, you may close with Mr. Smith, provided it is done at once, at same price, $17 50. Please return to me Mr. Smith's contract of 21 Sept.

Yours, truly,

F. BRONSON, *Ex.*

No. 26.—D. W. JACKSON, *U. S. Commissioner.*

NEW YORK, *July 30th*, 1861.

W'M C. BOSTWICK, Esqr.

105 DEAR SIR: Yours of 25th inst., enclosing d'ft of Ryland & Hollowway on Edwin & Ralph Mead, jr., & Co., of this city, for $405 33, is received, &, the d'ft being paid, the amount as advised by you, is applied as payment on contract of Henry Probst, being for instalment & interest due this day. If Mrs. Probst pays the taxes & int., as she promises to do, it will be satisfactory to me.

Y'rs, truly,

F. BRONSON.

No. 27.—D. W. JACKSON, *U. S. Commissioner.*

NEW YORK, *Tuesday, July 23d*, 1861.

WILLIAM C. BOSTWICK, Esquire, *Galena, Illinois.*

DEAR SIR: I rec'd, on my return from the country this morning, your letter of the 15th instant; herewith please find my contract of this date with John Robinson and George Robinson for the W. ½ N. E. ¼, sec. 27, T. 6 N., range 2 west, 80 acres, in Grant Co., Wis., consideration, $800; payable, $50, cash; $100, June 26, 1862, and the residue in three equal annual instalments from June 26, 1862, with annual interest from date of contract at 7%. If they will not pay interest from date of contract, you will please return them to me, as I do not wish to make any agreement where interest does not commence at the date of such agreement. The first payment offered is barely 7% on the principal, and, I think, in future, in all $800 contracts at least a first payment of 15% should be rec'd by me, and a much larger proportion or larger amounts, if you cannot get more.

I also inclose my contract with Thomas Tormey of same date for W. ½

N. W. ¼ 26, 6, 2 W., Grant Co., consid'n, $800; payable, $50, cash; $100 June 1, 1862; & balance in 4 equal ann'l instalments from June 1, 1862, with ann'l interest from date of contract, to be delivered subject to the same restrictions as in the case of Robinson.

If these two contracts are accepted, you will please return to
106 me the counterparts properly executed with the respective first payments, less your commissions. Your postcript says that Tormey will pay taxes for 1861 on W. ½ N. W. ¼, upon the terms of pay't proposed by him. Is there any reason why he or the Mess. Robinson should not pay the taxes for 1861, should they accept the contracts as inclosed?

Yours, truly,

FREDERIC BRONSON,
Indu'd & as Ex.

No. 28.—D. W. JACKSON, *U. S. Commissioner.*

NEW YORK, *Dec'r* 23, 1864.

W'M C. BOSTWICK, Esqr.

DEAR SIR: I had the pleasure of renewing my personal correspondence with you by my letter of the 15th inst., after a long absence in Europe. Since I wrote that letter I have had an application from the Devon Mining Company to lease the E. ½ S. W. ¼ sec. 29, 5 N., 3 east. They say that they have leased the adjoining lands from John Brachen at $\frac{1}{16}$ of the gross amount of mineral raised.

Do you know anything about the value of the tract as mineral land, or of the responsibility of the above company, and what is the usual rent reserved in the way of royalty in like cases, & what covenants are usually inserted in the lease to protect the interests of the owner in the recovery of the rent, and how is the amount raised, verified, & ascertained? I am entirely inexperienced in such operations & contracts. An early answer to this & my letter of the 15 will oblige me very much. Will you send me a careful estimate of all those lands called by me Legate Lands, including the Elk Grove farm, with the rent rec'd, &c.?

Yours, truly,

F. BRONSON.

No. 29.—D. W. JACKSON, *U. S. Commissioner.*

NEW YORK, *March* 12, 1865.

W'M C. BOSTWICK, Esqr.

D'R SIR: Mr. Brewsters called this morning, at my office here, to
107 inquire the price of S. W. ¼ of sec. 4, 1, 4, Lafayette Co. I referred him to you, remarking that I supposed it was worth $10 per acre. He said he thought it w'd be worth that in about 2 years, but now it was worth about 7 or $8. He applied in behalf of a German residing near it, of the name of Slaughwort. He also said that a neighbour of his had applied for the N. frac. No. 8 of N. W. ¼ of 3, 1, 4, 57.18 acres, for which you asked $10, & that his neighbour had made up his mind to give it, & would probably call on you soon, if he had not already done so. I write this to inform you of what has transpired, that you may act advisedly.

Respectfully, y'r,

F. BRONSON, *Ex.*

No. 30.—D. W. JACKSON, *U. S. Commissioner.*

NEW YORK, *Oct. 18th*, 1865.

WILLIAM C. BOSTWICK, Esqr., *Galena, Illinois.*

DEAR SIR: Agreeably to your letter of the 6th inst., I herewith inclose my two deeds of this date, one to John G. Perkins, for the S. ½ of N. E. ¼ of 19, 6, 2 W., and the other to Henry Nieman, assignee under the contract with Philander Wright, for E. ½ of N. E. ¼ of 29, 6, 2 W., Grant Co., Wisconsin. The amount due from each I give you on next page. On their paying the same, and surrendering each his contract, you will please deliver the deeds, first seeing that the Wright contract has been properly assigned to Nieman, and also in his case have an official cerft. furnished as to incumbrances. The stamps for the deeds I will thank you to affix at my expense, and remit the balances to me.

M. Calhoun's acknowledgment to the deeds, you will notice, is not verified by our county clerk, for the reason, he says, that you are of the opinion it is not necessary, notwithstanding the exception in the case of Mr. W'm W. Field, whose deed you brought on that a cerft. might be affixed. What is the law in the case? Your letter of the 14 inst. is rec'd, with the application of Peter Finnegan & H. Drinkleff, to 108 which I cannot reply, as you do not state the amount offered, nor the rate per acre.

Yours, truly,

F. BRONSON.

John G. Perkins, to amount due, with interest at 8%, from March 1st, 1865 ..... $12 96

Philander Wright, to amount due, with interest at 7%, from May 2d, 1865 ..... $168 18

No. 31.—D. W. JACKSON, *U. S. Commissioner.*

NEW YORK, *August 18th*, 1865.

WILLIAM C. BOSTWICK, Esqr., *Galena, Illinois.*

DEAR SIR: Your letter of the 15th instant, communicating Mr. Thomas Chapman's offer to purchase the W. ½ N. E. ¼ of 26, 6, 2 west, 80 acres, @ $15 per acre, is rec'd. Enclosed please find my contract with him for the same tract, payable, $200 down, and the balance in instalments of $200 each, payable 1 June, 1866, 1867, 1868, 1869, and June 1st, 1870. When the contracts are exchanged and the money paid, please send to me the one signed by Mr. Chapman, with the cash payment, less your commissions on the sale.

Please also send to me the contract sent to you June 20, '62, with Geo. Petters, for E. ½ S. E. ¼ of 26, 6, 2 This sale, Mr. Calhoun says, you informed him Mr. Pettis will not be able to carry out.

Cannot you *not* send me some more applications for the "Two Brothers" farm, @ $15 per acre & over?

Yours, truly,

F. BRONSON.

No. 32.—D. W. JACKSON, *U. S. Commissioner.*

NEW YORK, *June* 18, 1860.

WILLIAM C. BOSTWICK, Esqr., *Galena, Illinois.*

DEAR SIR: Yours of the 13th, returning my contract with Mr. Wal-

ter Thomas for N. E. ¼ 12, 6, 4 E., Iowa Co., is received, and I now accept of the offer of Mr. Samuel J. Davies for this same tract, as contained in your letter of the 4th instant, and inclose herewith my contract with him, dated June 4, '60, for the N. E. ¼ 12, 6, 4 E.,
109 Iowa Co., Wis., payable, $250, Aug. 1, '60; $150, June 4, '61; $150, June 4, '62; $150, June 4, '63; & $300, June 4, '64, with annual interest at seven per cent. from date of contract. I also inclose a counterpart of the contract, which you will please request Mr. Davies to execute, which, with the 1st payment of $250 on August 1st next, I will thank you to remit to me, including interest from June 4 to Aug. 1, '60, first deducting your com's on the sale.

I regret that you have had so much trouble in closing the sale of this tract to former applicants, and hope that Mr. Davies, by his default to execute the inclosed, may not be added to the list.

Yours, truly,

F. BRONSON, *Ex.*

No. 33.—D. W. JACKSON, *U. S. Commissioner.*

NEW YORK, *Feb'y* 11, 1861.

W'M C. BOSTWICK, Esqr.,

DEAR SIR: Yours of the 6th instant, acknowledging the receipt of mine of the 25 January (was it not the 28th?) reached me this morning, covering the contract sent to you Jan'y 9th, for the execution of it by Craven Shuttleworth, which he declined to do at the rate of interest therein expressed, viz, 10%. I reinclose to you the contract with him to sign, with the counterpart duly executed by myself, dated Jan'y 9, 1861, with the rate of interest altered to 7%, for the W. ½ N. E. ¼ 29, 6, 2 W., 80 acres, in Grant Co., consid'n, $800; $50 down, and the residue in 3 eq'l annu'l pay'ts from Nov. 1, '61, which if he executes and makes the first payment, you may deliver mine, & return his with the 1st pay't, less y'r com's.

The alteration by you from 10 to 7% in the case of John Hale's contract, dated Dec'r 17, '60, is in conformity with my instructions to you of that date.

When the counterpart of Sam'l J. Davies' contract with me is
110 executed by him, please send it to me, but, until you receive it, continue to retain in your possession mine with him.

If Thomas Tormey will not pay 10%, you may negotiate with him as to interest at the best rate you can between 7 & 10%, but not under 7%, and on learning the result I will accept substantially his offer in your letter of January 16th, excepting as to interest, leaving that with you and he to decide subject to instructions herein given.

Respectfully & truly, yours,

FREDERIC BRONSON.

No. 34.—D. W. JACKSON, *U. S. Commissioner.*

NEW YORK, *March* 19, 1856.

W'M C. BOSTWICK, Esqr., *Galena.*

DEAR SIR: Your favour of the 12th instant reached me this morning. I return to you the deed to Lewis Benedict, with the commissioner's certificate corrected. The receipt which I have for taxes for 1854 in Lafayette County is for all the lands in that county under my charge. I cannot, therefore, surrender it for the purpose of obtaining the repayment of $5 95 paid on the E. ½ of N. E. ¼ 21, 3, 1 E. I find by this

receipt that the tax for the same year on the west half of the same quarter-section was the same, viz. $5 95, and as you say his receipt is for only $2 93, I am induced to think he may possibly have paid the tax on some other tract, although the bill which he has says it was on the E. ½ of N. E. ¼ 21, 3, 1 E. This tract was returned to the county treasurer, and would have been sold for the tax if I had not protected it.

I inclose my order on the treasurer of Lafayette County for the $5 95, on which, I should think, Mr. Benedict should get paid to him, provided he can satisfy the treasurer that he paid to the town collector all the taxes for 1854 that were assessed on E. ½ N. E. ¼ 21, 3, 1 E.

111 Should Mr. Benedict, however, still decline paying only the $5 81 with interest thereon since 1st March, 1854, I will leave it with you to deliver the deed or not on receiving that amount, as you may think equitable under all the circumstances.

Respectfully, y'r ob. s't,

FREDERIC BRONSON, *Ex.*

P. S.—If you receive a letter from me dated March 17th, forwarded by Judge Crawford, of Mineral Point, it will relieve you from the trouble of attending the court about Denniston business, as Mr. Dewey has retained Judge Crawford, & I have remitted to him duplicates of the papers sent to you. If you do not receive my letter from Judge Crawford it will show that my letters to him have miscarried, & your attendance will be necessary.

F. B.

No. 35.—D. W. JACKSON, *U. S. Commissioner.*

NEW YORK, *Feb'y* 22, '60.

W'M C. BOSTWICK, Esqr., *Galena, Ill's.*

DEAR SIR: I rec'd, on the 20th instant, your favour of the 16th, with a draft for two hundred and forty-four $\frac{90}{100}$, of which I have credited—

On account of trustees of Baptist Church, Galena		$40
ac. Andrew Reid, old contract		95 15
ac. Andrew Reid, new contract		109 75
		$244 90

I have restated Andrew Reid's ac., as you omitted interest on $460 from July 29 to Dec'r 31, '59, 5 m's, 2 d'ys $12 50

Int. on $920, $12 50—$932 50, from Dec. 31, '59, to Jan'y 24, '60, the day the paym'nt was made & date of new contract ... 4 35

(Over) $16 85

Add consid'n new contract	$560	
Less	200	
		360 00
		$376 85

To make the calculation quite plain, I send copy of the account

112 as it stands now. Please obtain the surrender and cancelment of the old contract and Mr. Reid execution of the new one, and then deliver to him my counterpart, & return to me the old contract and his counterpart of the new to me; the supplementary stipulations at the

foot of the new contract to be signed by both parties, sufficiently absolving Mr. Reid from the obligation of the old contract.

Yours, truly,

F. BRONSON, *Ex.*

No. 36.—D. W. JACKSON, *U. S. Commissioner.*

NEW YORK, *June* 12, 1860.

W'M C. BOSTWICK, Esqr., *Galena.*

DEAR SIR: I have rec'd, on my return to this city, your letter of the 4th instant. The cash offer of Mr. John Bosanke I will accept by inclosing herewith my deed to him of the 11th inst. for the E. ½ of N. E. ¼ sec. 34, T. 6 N., range 3 east, 80 acres, in Iowa County, Wisconsin, consideration, five hundred dollars, which I hereby authorise you to deliver to him on his paying to you the said five hundred dollars; and the proceeds thereof, after your com's are deducted, you will please enclose to me.

Should, however, you be successful in obtaining a higher offer for this land, as suggested in your letter, you will, in such case, return to me my deed to Bonsanko cancelled, and I will make a contract to the party accordingly.

On the return of my contract with Mr. Walter Thomas, I will send my contract to Sam'l J. Davies for the N. E. ¼ 12, 6, 4 E., Iowa Co., on the terms stated in your letter of the 4th inst.; contract to be dated from that date. The Thomas contract you returned was the unexecuted one, and not the one executed by me.

Yours, truly,

F. BRONSON.

113 No. 1.—D. W. JACKSON, *U. S. Commissioner.*

NEW YORK, *March 16th*, 1864.

W'M C. BOSTWICK, Esqr.

DEAR SIR: Your favor of the 11th inst. is rec'd, enclosing your d'ft on Messrs. Gilman, Son & Co., of this city, for $958 26; also contract executed by Abner McDonald for E. ¼ S. W. ¼ 20, 6, 2, with statements of acc'ts of McDonald & J. & G. Robinson. As advised by you, I have applied your draft as follows, viz: $548 80 thereof as payment in full for deed to Abner McDonald of W. ½ S. W. ¼ 20, 6, 2 W.; $16 02 thereof as payment on contract of McDonald for E. ½ of S. W. ¼ 20, 6, 2 W., leaving unpaid $600, with int. from Ap'l 5, '63, and $393 44 as payment on contract of John & George Robinson for W. ½ N. E. ¼ 27, 6, 2, leaving unpaid $433 34, with interest from June 26, '63, to which you will please add $18 89 for taxes 1861, paid by me April 8th, 1862, with interest from that date. Your mode of statement of acc'ts differs from mine. I have, however, in the above cases, adopted yours under the circumstances you name. The interest as charged by you is satisfactory.

With respect to terms & prices for land, I must repeat that I have no instructions from Mr. Bronson to offer his lands for sale at present. I trust, however, he will, within a few months, be at home again, when he can consider your suggestions as to the sale of his lands.

Respectfully, yours,

ELIAS L. SMITH,
Att'y of Frederic Bronson.

(This is in handwriting of Elias L. Smith, now legal adviser of F. Bronson. Sept. 2, 1868.

A. L. CUMMINGS,
Sol. for Comp't.)

No. 2.—D. W. JACKSON, *Commissioner.*

NEW YORK, *March 7th*, 1862.

W'M C. BOSTWICK, Esqr.

DEAR SIR: Your favor of 3d inst. is rec'd, with d'ft of State
114 Bank of Wisconsin on Bank of North America for $100 00, which sum, as advised by you, is applied as payment on acc't of William W. Field's contract for N. W. ¼ of 19, 6, 2 W.

Respectfully, yours,

FREDERIC BRONSON,
By ELIAS L. SMITH, *Att'y.*

(This is in handwriting of Elias L. Smith, now legal adviser of F. Bronson. Sept. 23d, 1868.

A. L. CUMMINGS,
Sol'r for Comp'ts.)

No. 3.—D. W. JACKSON, *Commissioner.*

NEW YORK, *April 10th*, 1862.

W'M C. BOSTWICK, Esq'r.

DEAR SIR: Your favor of the 7th inst. is received, with d'ft on Wisconsin State Bank on Bank of North America of this city for $100; and, as advised by you, said sum is applied as payment on acc't of interest due 1st March last, on contract of Michael Bower, for S. W. ¼ of 19, 6, 2, leaving balance of $1,074 39, with int. @ 10 % from March 1, '62, as per statement below.

Permit me to call your attention to Alex'r Miller contract for W. ½ N. W. ¼ 25, 6, 2, who is in arrear for payment due 1st Jan'y last, & for taxes 1860, paid for him; amount given below. When did the taxes 1860 become a lien upon the land contracted to Miller under date of November 30th, 1860?

Respctfully, yours,

FREDERIC BRONSON,
By ELIAS L. SMITH, *Att'y.*

(This is signed by Elias L. Smith, now legal adviser of F. Bronson. Sept. 23d, 1868.

A. L. CUMMINGS,
Sol'r for Compl't.)

No. 4.—D. W. JACKSON, *Commissioner.*

NEW YORK, *Novem'r 22d*, 1861.

W'M C. BOSTWICK, Esqr.

DEAR SIR: Yours of 18th inst., enclosing draft of Bank of Galena on Market Bank of this city for $95 80, is received, together with contracts executed by J. &. G. Robinson & Tho's Tormey. As advised by you, I have applied said draft as payment of the following, viz:

	Bal. of int. due from C. C. Collins.....		1 00
115	First payment on contract of J. & G. Robinson..	50 00	
	" " " do. of Tho's Tormey.....	50 00	
		100 00	
	Less your commissions on sale to them.....	80 00	
			20 00
	Bal. of int. due from Tho's Tormey on paym't Aug. 23, '61.....		4 80
	12 m's' int. to June 4, '61, on Sam'l J. Davies' cont...	52 50	
	Taxes 1860, paid for him.....	16 12	
	On ac. interest on defer'd payment of above, leaving 0 80 bal. of int. unpaid.....	1 83	
			70 00
			$95 80

Your favors of 4th & 17th Oct'r were each duly received and promptly answered, and I herewith hand you copies of the same, bearing date the 10th & 22d Oct. I cannot account for their not reaching you. Upon receiving your letter of 4th Oct., I communicated to Mr. Bronson the offers you report therein from Wightman & Wood, and from Lansing & Shultz, for N. E. ¼ sec. 26, 6, 2 W. Mr. Bronson is willing to sell, but desires a payment down that will secure the fulfilment of the contract on the part of the purchasers; and, beleiving that you will be able to induce those gentlemen to come nearer to the views of Mr. Bronson, I herewith enclose contracts, the terms of payment modified a little from those they propose, viz: $100 cash on execution & delivery of contract; $100 on 1st Nov'r, 1862; $200 on 1st Nov'r, 1863, 1864, & 1865, with int. @ 7 °|₀ per ann. from 1st Nov., 1861.

Mr. Bronson writes that his health is somewhat improved.

Respectfully, yours,

ELIAS L. SMITH,
Att'y of Frederic Bronson.

(This letter is in the handwriting of Elias Smith, now legal adviser of Frederic Bronson. Sept. 23d, 1868.

A. L. CUMMINGS,
Sol'r for Comp't.)

Copy.

NEW YORK, *Oct.* 10, 1861.

W'M C. BOSTWICK, Esqr.

DEAR SIR: Your letter of the 4 inst. was this m'g rec'd, with the application of Messr. Wightman & Wood to purchase the S. ½ N. E. ¼ 26, 26, (this township is intended for 6 probably,) 2 west, & of Peter
116 Lansing to purchase the N. ½ of same section, @ $10 per acre: $50, Nov. 1, '61; $250, Nov. 1, '63; $250, Nov. 1, '64; & $250, Nov. 1, '65, 7°|₀ int.

I am restricted as the agent of Mr. Frederic Bronson from accepting any applications for the purchase of his lands when a down pay't of at least ¼th is not made, & when the time exceeds 4 years; therefore, I cannot, as the above applications stand, be able to accept them. If you can prevail upon the parties to come within Mr. Bronson's rule in this matter,

or approximate to considerable nearer his instructions to me, particularly as to the 1st pay't, & can persuade them to pay 10°|₀ int., or will do your best to this end, I will, on receiving such modified applications from you, submit them to my coattorney, Mr. Philip R. Kearny, who is also acting with me for Mr. Bronson, during his absence in Europe. If Mr. David Thompson will remit the year's int. @ 12°|₀, due 1 Oct., int. on the bal. of $68 68, also $18 68, so as to reduce the bal. to fifty dollars of principal on 1 Oct. 1861, with int. @ 12°|₀ from that date, I will have no objections to extend said balance to 1 Oct., 1862. I will also consent to extend the bal. due on the contract of Mr. Barker's till Oct. 1, '62, on his paying up his int. to the 1st instant.

Yours, truly,

(Signed) FREDERIC BRONSON, *Ex.*,
By ELIAS L. SMITH, *Att'y.*

P. S.—Mr. Bronson sailed in the Persia yesterday for Liverpool, to be absent some months.

Copy.

N. Y., *Oct.* 22, '61.

W'm C. Bostwick, Esqr.

Dear Sir: Yours of 17th in't, inclosing d'ft of Farmers & Millers' B'k of Milwaukee on Am'c'n Exch'ge B'k of this city for $161 50 is rec'd, &, as advised by you, said sum is applied as pay't on ac. of contract of Cummins C. Collins, dated 4 Oct., 1859, being for instalment of $133 50, due on 4 Oct. inst., & for int. for 12 m's to 4th inst., on
117 $400 25, leaving due 60 cents for int. on deferred pay't.

Resp'y, yours,

(Signed) FREDERIC BRONSON,
By ELIAS L. SMITH, *Att'y.*

No. 5.—D. W. Jackson, *Commissioner.*

New York, *March* 27, 1862.

W'm C. Bostwick, Esqr.

Dear Sir: Your favor of 22d inst. is received, with the drafts & tax receipt, as therein mentioned, amounting together to $142 29, which sum, as advised by you, I have applied as follows, viz: $90 37 to credit of contract of John G. Perkins, dated Nov. 2, '60, as payment of interest to March 1, '62; $53 60 & 36 77 on ac. instalm't due March 1, '62; & 51 92 to credit of B. & m'tg'e of W'm Bailey & others, trustees, being for interest to March 1, '62—$142 29.

How is it with Andrew Reid? Nothing has been rec'd from him since Feb'y 20, '60.

Respectfully, yours,

FREDERIC BRONSON,
By ELIAS L. SMITH, *Att'y.*

& the taxes on lot 21, Galena, I hope will receive y'r attention.

(This is in handwriting of Elias L. Smith, now legal adviser of F. Bronson. Sept. 23d, 1868.

A. L. CUMMINGS,
Sol'r for Comp't.)

No. 6.—D. W. JACKSON, *Commissioner.*

NEW YORK, *May 16th*, 1863.

W'M C. BOSTWICK, Esqr.

DEAR SIR: I received this morning your letter of the 13th inst. Your statement of the amount due March 1, 1863, from W'm Bailey & others, viz, $517 19, is correct; &, agreeably to your request, I inclose herewith their bond & mortgage, with the satisfaction price duly executed & acknowledged.

Please deliver these papers, on receiving the amount due with int. to time it is rec'd by me, including $1 50 for the disch'ge. I also
118 inclose Mr. Bronson's power authorising Mr. Kearny & myself to discharge mortgages, which I will thank you to return to me, with the amount due *due* as stated above.

Yours, truly,

ELIAS L. SMITH,
Att'y of Frederic Bronson.

(It is stipulated that this letter is signed by Elias L. Smith, who is the legal adviser of Frederic Bronson. Sept. 23d, 1868.

A. L. CUMMINGS,
Sol'r for Compl't.)

No. 7.—D. W. JACKSON, *U. S. Commissioner.*

NEW YORK, *March 31st*, 1864.

W'M C. BOSTWICK, Esqr.

DEAR SIR: Your favor of 20th inst. is rec'd, enclosing your d'ft on Messrs. Gilman, Son & Co., of this city, for $520, which, as advised by you, I have applied as payment on contract of John McDermott for S. E. ¼ 22, 6, 2, dated May 30, '61; & I have also credited thereon $30 received by you from him, & retained for bal. of your commissions on sale to him, making the total credit of $600 on said contract, including the $50 previously rec'd & retained by you. You will please charge him $49 01 for taxes, 1862, & expenses of paym't, paid by me April 1, '63, on his land, through Nelson Dewey, esqr.

As you request, I hand you herewith enclosed a deed for W'm W. Field (*see postcript) of N. W. ¼ 19, 6, 2, (amount unpaid on contract, $533 33, with int. @ 10°|₀ from Mar. 1, '63,) & deed for Tho's Tormey of E. ½ N. W. ¼ 26, 6, 2, (am't unpaid on contract, $283 92, with int. @ 7°|₀ from Jan. 14, '63,) which deeds you can deliver on receiving paym't due and surrender of respective contract, which please forward to—

Respectfully, yours,

FREDERIC BRONSON,
By ELIAS L. SMITH, *Att'y.*

P. S.—Mr. Bronson, in a letter recently received, writes: "I am willing to sell lands, through Mr. Bostwick, upon an advance in price equal to the depreciation of paper money at the time of sale, payable in ten years, one-quarter down & the residue in five yearly payments,
119 the first payment to be made in five years from the date of the contract, the rest of the principal and interest 7°|₀ to be paid in wheat, (the present price of wheat may be taken to ascertain the quantity of bushels delivered at Galena.) If such a contract is made, it

will not necessarily involve the use of wheat, except as the measure of value."

E. L. S.

*On examination, no deed can be found prepared for W. W. Field. His contract must have been overlooked when the other deeds were prepared. I trust it will not make much difference to Mr. Field to wait for Mr. Bronson's return, which he intimates will be next summer.

E. L. S.

(It is hereby stipulated that the foregoing letter was written by Elias L. Smith, the person by whom it purports to have been written, and that during this year of 1868 the writer, Elias L. Smith, is the acting legal adviser of F. Bronson.

A. L. CUMMINGS,
Sol'r for Bronson, Compl't.)

No. 8.—D. W. JACKSON, *U. S. Commissioner.*

NEW YORK, *March 9th*, 1864.

WM C. BOSTWICK, Esqr.

DEAR SIR: Yours of 2d inst., reporting that W. W. Field inquires price of W. ½ N. E. ¼ 19, 6, 2, Grant Co., is received. In reply I can only say that at present I have no instructions to offer any lands for sale while the currency continues so depreciated. I would, however, suggest that if you have an offer for any tract, which you would recommend to be accepted, I will communicate it to Mr. Bronson for his decision, who, I am pleased to say, has intimated that he expects to return to this city in the ensuing summer.

In your letter of 14th Dec'r last you ask for deeds to be sent you for David Thompson, Andrew Reid, and Joseph Mathews, assignee of John Barbour. These deeds I now beg leave to hand you, herewith enclosed, Mr. Bronson having directed that they should be sent out to him, and he has executed and acknowledged them before U. S. consul, in Paris. You will of course receive from the several parties the amounts due on the contracts, & the surrender of the contracts, with receipts thereon for the deeds, before you deliver the deeds, pursuing the course you suggest in your letter respecting the assignment of the Barbour contract.

120

Annexed I hand you statements of the amounts due on the respective contracts, which you will please remit to me when they are received by you.

Respectfully, yours,

FREDERIC BRONSON,
By ELIAS L. SMITH, *Att'y.*

(It is stipulated that this letter was written by Elias L. Smith, who is now the legal adviser of F. Bronson, in New York. Sept. 23d, 1868.

A. L. CUMMINGS,
Sol'r for Comp't Bronson.)

No. 9.—D. W. JACKSON, *U. S. Commissioner.*

NEW YORK, *July 10th*, 1862.

WILLIAM C. BOSTWICK, *Galena, Illinois.*

DEAR SIR: I rec'd this morning your favour of the 7th instant, and, as

you request, I herewith inclose my deed to Mary Wefel, of Grant Co., assignee of Henry Probst, dated Oct. 1, '61, for the S. E. ¼ of sec. 19, T. 6 N., range 2 west, 160 acres, in Grant Co. On next page I give you statement of the amount due on Mr. Probst contract, namely, four hundred and thirteen $\frac{35}{100}$ dollars, with interest from July 30th, 1862. Upon the receipt of which on that day, & the surrender of the contract, with Mr. Probst assignment thereof to Mary Wefel endorsed thereon, you will please deliver the inclosed deed & return the contract to me with her receipt thereon of the deed, and the amount due as stated. If the contract has been recorded & incumbrances put upon the property, please return to me the deed; but if recorded, and no incumbrances against the land are found, the necessary search to that effect is all that I require.

Yours, truly,

FREDERIC BRONSON,
By ELIAS L. SMITH, *Att'y.*

121

July 30, '61.	To am't principal due and unpaid.....	355 55	
	" int. on same to July 30, 62.....	24 89	
			$380 44
1860.			
May 19.	Paid tax for 1859.....	28 52	
	Int. on same to July 30, '62, 2 y's 2 m's 11 d'ys, & to am't due, with int. from July 30, '62.....	4 39	
			32 91
			$413 35

On exchange on New York if paid here.

No. 10.—D. W. JACKSON, *U. S. Commissioner.*

NEW YORK, *May* 26, 1862.

WM C. BOSTWICK, Esqr.

DEAR SIR: On next page I give you copy of a letter rec'd this day from Mr. Elmore Russell, dated Fennimore, Grant Co., May 21, 1862. I have replied to Mr. Russell that my terms of sale will be communicated to him through you.

The tract he applies for, namely, the N. ½ N. E. ¼ sec. 19, T. 6 N., R. 2 W., 80 acres, in Grant Co., you will please say to him I will sell for $800; ¼th down, & the residue in three equal annual instalments, annual int. I have sold through you, in sec. 19, other portions of this tract to parties at an annual interest of 7, 8, & 10%, & I leave with you to treat with Mr. Russell as to the rate of int. between 7 & 10%, not under 7, & also as to the time next winter for the first payment; the contract to bear date from to-day, carrying interest from this time, if he accepts my terms, but not to be delivered until the 1st payment is made.

Respectfully, yours,

FREDERIC BRONSON,
By ELIAS L. SMITH, *Att'y.*

If Mr. Russell should take possession of the land before the contract is delivered & the first payment made, I should expect him to pay down a sum sufficient to insure his carrying out the contract.

Copy.

FENNIMORE, GRANT CO., WIS., *May* 21, 1862.

122 FREDERIC BRONSON, Esqr., *New York City.*

DEAR SIR: Will you inform me the best terms on which I can purchase the N. ½ of N. E. ¼ of sec. 19, T. 6, R. 2 west, in Grant County, say, make the first pay't some time next winter; thereafter making yearly payments?

Yours, &c.,

(Signed) ELMORE RUSSELL.

No. 11.—D. W. JACKSON, *U. S. Commissioner.*

NEW YORK, *June* 20, 1862.

WILLIAM C. BOSTWICK, Esqr., *Galena, Illinois.*

DEAR SIR: Your favour of the 17th inst., communicating the offer of George Pettis, is rec'd; and herewith inclosed please find my contract of this date with him for the E. ½ of S. E. ¼ 26, 6, 2, 80 acres, in Grant Co., Wis., consid'n $800, payable; $20 down; $100, Oct. 10, '62; and $170 each on the 10th days of Oct., 1863, 1864, 1865, & 1866. You will please keep this contract, with the counterpart, in your possession until the 1st & 2d payments are made to you, namely, $20 now, & $100 Oct. 10, 1862, at which time, if the payments are made, you can deliver to Mr. Pettis one, & return the other to me, with the $120, first deducting your com's on the sale. I have made a memorandum at the foot of the contract, to be signed by Mr. Pettis, that he is to pay $20 on the execution, & the further sum of $100, Oct. 10, '62, at which time, if the payment is made, the contract is to be delivered; otherwise not. As to the interest, please do the best you can between 7 & 10%. The blanks are left for you to fill in.

Yours, truly,

FREDERIC BRONSON,
By ELIAS L. SMITH, *Att'y.*

No. 12.—D. W. JACKSON, *U. S. Commissioner.*

NEW YORK, *June 20th*, 1862.

W. C. BOSTWICK, Esqr.

DEAR SIR: Your favor of 17th inst. is rec'd, with contracts for
123 Steel & for Montieth returned not executed; four drafts, as therein mentioned, amounting together to $514 57; and tax receipts & ch'g's, $64 93—in all $582 50, which sum, as advised by you, I have applied as follows, to wit:

$50		to cr. of Andrew Reid on his contract of July 29, '57.
10	00	to cr. of W'm W. Field on his do. " July 31, '60.
2	50	to pay for drawing contracts for Michael Steel.
200	00	(including your com's) to cr. Abner McDonald on his contract for E. ½ S. W. ¼ 20, 6, 2; &
400	00	(including your com's) to cr. Abner McDonald on sale to him of W. ½ S. W. ¼ 20, 6, 2, by deed.
662	50	
80		com's.
$582	50	not to be delivered until consideration & interest is paid in full.

I hope Messrs. Reid & McDonald will soon pay balances & the interest to close ac's.

Respectfully, yours,

FREDERIC BRONSON,
By ELIAS L. SMITH, *Att'y.*

No. 13.—D. W. JACKSON, *U. S. Commissioner.*

NEW YORK, *March 9th*, 1863.

W'M C. BOSTWICK, Esqr.

DEAR SIR: Your favor of 3d inst. is rec'd, enclosing three d'fts of State Bank of Wisconsin on Bank of North America of this city, in all for $446 67, which, as advised by you, I have applied in payment as follows: $346 67 on contract with W'm W. Field, leaving unpaid thereon $533 34, with int. 10% from Marc. 1, '63; and $100 on ac. on contract of Michael Bower, leaving $1,081 83 unpaid, with int. 10% from March 1, '63. It would seem to me there is some misapprehension with regard to the case of Mr. Barbour, to which you refer. It is far from my wish to exact anything that would be deemed unjust or onerous. I do not insist upon the payment of the balance until the deed can be delivered, nor can I perceive any reason why I should not be paid interest upon the balance up to the time it is rec'd by me. I have not required any deposit of the money, and if Mr. B. prefers to place it there in-
124 stead of paying it to me, surely that cannot be claimed as a sufficient reason why interest should not be paid to me for the time I remain unpaid. Mr. Barber, by holding his contract, would be just as secure in making his final payment as he was in making any previous one. As to the difference between 10 & 12% rate of interest, you may arrange that as you think proper. I do not desire you to pay me any more than you receive.

Respectfully, yours,

FREDEREC BRONSON,
By ELIAS L. SMITH, *Att'y.*

No. 14.—D. W. JACKSON, *U. S. Commissioner.*

NEW YORK, *August* 1, 1862.

W'M C. BOSTWICK, Esqr.

DEAR SIR: Yours of the 29th ulto. is rec'd. Although the terms of payment proposed by Mr. Russell are much lower than those given to you, I have concluded to accept his proposition, & herewith inclose my contract of date May 26, 1862, with him for the N. ½ N. E. ¼ 19, 6, 2 W., 80 acres, in Grant Co., consid'n, $800, $25 down; $25, Sept. 1, '62; $100, Feb'y 1st, 1863, & the remainder in 4 equal annual instalments, with int. from date of contract, the rate to be agreed upon between Mr. R. & yourself, @ not under 7%, nor over 10%. This contract, however, is not to be delivered until Mr. Russell shall have paid to you $150, as stated in your letter.

The payments, first deducting your commissions, please remit.

Yours, truly,

FREDERIC BRONSON,
By ELIAS L. SMITH, *Att'y.*

P. S.—As I inadvertantly executed both contracts, please request Mr. Russell to come to you to sign.

No. 15.—D. W. JACKSON, *U. S. Commissioner.*

NEW YORK, *May 29th*, 1863.

W'M C. BOSTWICK, Esqr.

125 DEAR SIR: Your favor of 26th inst. is received, with drafts on banks in this city, as therein named, amounting to $529 90, which sum, as advised by you, is applied in payment of balance due on bond & mortgage of W'm Bailey & others, trustees, & for expense of certif. of discharge, which, with said bond & m't'ge, were sent to you on 16th inst., thus closing that account.

I shall be pleased to hear from you, as you intimate, in relation to parties who are in arrears with their payments.

Respectfully, yours,

FREDERIC BRONSON,
By ELIAS L. SMITH, *Att'y.*

No. 16.—D. W. JACKSON, *U. S. Commissioner.*

NEW YORK, *April 21st*, 1862.

W'M C. BOSTWICK, Esqr.

DEAR SIR: If Alexander Miller will meet his payment, due in Jan'y last, within the month of May next, with the interest, as stated in your letter of the 16th inst., it will be satisfactory to me.

Mr. Richards will reply to that portion of y'r letter relating to Mr. Stevens, and his reply is herewith inclosed.

Respectfully, yours,

FREDERIC BRONSON,
By ELIAS L. SMITH, *Att'y.*

No. 17.—D. W. JACKSON, *U. S. Commissioner.*

NEW YORK, *April* 23, 1862.

W'M C. BOSTWICK, Esqr.

DEAR SIR: Your favor of 19th inst. is received, with draft upon Corn Exchange Bank of this city, for $100 00, and, as advised by you, I have applied the same as payment on account of contract of Samuel J. Davies, dated June 4, '60.

Respectfully, yours,

FREDERIC BRONSON, *Ex.*,
By ELIAS L. SMITH, *Att'y.*

No. 18.—D. W. JACKSON, *U. S. Commissioner.*

NEW YORK, *June 10th*, 1862.

126 WILLIAM C. BOSTWICK, Esqr., *Galena, Ill's.*

DEAR SIR: I am in receipt this morning of your favor of the 6th inst., inclosing several papers relating to the Stevens matter, & inclosed please find Mr. Guy Richard's reply thereto.

The application of Dwight T. Parker, as stated in your letter, I will accept, & herewith inclosed please find my contract with him of this date for the S. ½ N. W. ¼ & S. ½ N. E. ¼ 28, 6, 2 W., 160 acres, in Grant Co., consid'n, $1,600, payable, $240 down, & the residue in four equal annual instalments from Jan'y 1, 1863, with annual interest from date of contract. The rate of interest I have not written in the con-

tract, leaving that for you and Mr. Parker to decide upon the rate at 7, 8, 9, or 10%, as you may agree upon.

Considering the easy terms of payment granted he may be induced to pay over 7%. I am fully aware of the difficulties you have in receiving prompt communications from parties in Wisconsin who apply to you for my lands, & while I am willing to allow them a fair time to accept or reject my contracts, I do not care to indulge them too long, & thus prevent others from applying. May I therefore respectfully call your attention to the case of McDonald, Monteith, & Michael Steel?

Yours, very truly,

FREDERIC BRONSON,
By ELIAS L. SMITH, *Att'y.*

P. S.—Please deduct your commissions from the 1st payment, & return bal. to me, with the counter-contract executed by Parker.

No. 19.—D. W. JACKSON, *U. S. Commissioner.*

NEW YORK, *Novem'r 14th*, 1862.

W'M C. BOSTWICK.

DEAR SIR: Your favor of 11th inst. is rec'd, with d'ft of Bank of Galena on Market Bank of this city for $153 30, which sum, as advised by you, I have applied as payment on contract of Cummins
127 C. Collins, dated Oct. 4, '59, for W. ½ S. W. ¼ 24, 6, 2, being instalment of $133 50, & for int., 18 69, due Oct. 4th, 1862, & for interest on deferr'd paym't of same, $1 11—total, $153 30.

Your remarks upon purchasers in arrears with their payments are noted, and while it is proper that reasonable indulgence should be extended in proper cases, according to your judgment & discretion, under the circumstances I would suggest that it would be well not to encourage by too much leniency any laxity in efforts to comply with the conditions of the contracts.

Respectfully, yours,

FREDERIC BRONSON,
By ELIAS L. SMITH, *Att'y.*

No. 20.—D. W. JACKSON, *U. S. Commissioner.*

NEW YORK, *Oct. 10th*, 1861.

W'M C. BOSTWICK, Esqr., *Galena, Illinois.*

DEAR SIR: Your letter of the 4th inst. was this morning rec'd, with the application of Mess. Wightman & Wood to purchase the S. ½ N. E. ¼ 26, 26, (this township is intended for 6, probably,) 2 W., and of Peter Lansing to purchase the N. ½ of same section, @ $10 per acre: $50, Nov. 1, '61; $250, Nov. 1, '63; $250, Nov. 1, '64; and $250, Nov. 1, '65, 7% *instant.*

I am restricted, as the agent of Mr. Frederic Bronson, from accepting any application for the purchase of his lands when a down payment of at least one-fifth is not made, and when the time exceeds 4 years. Therefore, I cannot, as the above applications stand, be able to accept them. If you can prevail upon the parties to come within Mr. Bronson's rules in this matter, or approximate considerably nearer his instructions to me, particularly as to the first payments, and can persuade them to pay 10% interest, or will do your best to this end, I will, on receiving such modified applications from you, submit it to my co-attorney, Mr. Philip R. Kearny, who is also acting with me for Mr. Bronson during his absence in Europe.

128 If Mr. David Thompson will remit the year's interest @ 12% due 1st inst. on the balance of $68 68, also $18 68, so as to reduce the balance to fifty dollars, on 1st October, 1861, with int. @ 12% from that date, I will have no objection to extend said bal. to 1 Oct., 1862. I will also consent to extend the *the* balance due on the contract of John Barber till Oct. 1, 1862, on his paying up his interest to the 1st instant.

Yours, truly,

FREDERIC BRONSON, *Ex.*,
By ELIAS L. SMITH, *Att'y.*

Mr. Bronson sail'd for Europe on 9th inst., to be absent some months.
E. L. S.

No. 21.—D. W. JACKSON, *U. S. Commissioner.*

NEW YORK, *April 17th*, 1863.

W'M C. BOSTWICK, Esqr.

DEAR SIR: Your favor of 13th inst. is received, with two d'fts, as named by you, amounting to $408 51, which sum I have applied as advised by you, viz: $294 50 to credit of John Dinsdale on contract for E. ½ of N. W. ¼ 25, 6, 2, leaving balance on same unpaid of $303 65, int. from 1 Jan'y, 1863; $102 35 to credit of John Perkins on contract for S. ½ N. E. ¼ 19, 6, 2, leaving balance unpaid $394 22, int. from 1 March, 1863; $51 66 to credit W'm Baily & others, trustees, on contract for lot 52, on Beach st., leaving bal. unpaid, $517 28, int. 10% from 1 March, 1863, (66c. being ch'g'd for int. on defer'd payment of $51 66;) and $50 00 to credit of Andrew Reid on contract for E. ½ S. W. ¼ 4, 1, 4, leaving balance of $151 84 unpaid, with int. from 24 Jan'y, 1863.

Noting your remarks as to other matters, I remain, respectfully, yours,
FREDERIC BRONSON,
By ELIAS L. SMITH, *Att'y.*

NEW YORK, *Dec'r 15th*, 1864.

W'M C. BOSTWICK, Esqr.

DEAR SIR: I should have been much pleased to have seen you when in this city, and regret that circumstances prevented that pleasure.

129 I am desirous of closing up sales of all the "Legate" lands remaining unsold, (a list of which please find annex'd,) and will be obliged if you will report to me any and all offers you may have for the same. I will also thank you to furnish me with your appraisal of the value of each tract, & the lot in Galena.

What disposition can, in your opinion, be made of the "Elk Grove" or "Legate" farm? Can it be sold at or about its value? What do you estimate it to be worth, and how many acres does it comprise?

An early reply will oblige, truly yours,
FREDERIC BRONSON, *Ex.*

Circuit court of the United States for the district of Wisconsin.

FREDRICK BRONSON, EXECUTOR OF THE last will and testament of Arthur Bronson, deceased,
vs.
EDWARD CHAPPEL, SENIOR, EDWARD CHAPPEL, junior, and John Chappel.
} In chancery.

It is hereby stipulated by and between the parties hereto, by their

respective solicitors, that the deposition of William C. Bostwick may be taken in behalf of the defendant, to be read in evidence in the above-entitled cause, before Edward G. Mason, esqr., of No. 13 Dickey's Block, Chicago, who may act as examiner; that said deposition shall be taken orally, as prescribed by the amendment of March 17th, 1862, to the sixty-seventh rule in equity, and may be commenced on the 25th day of August, 1868, & continued until taken, provided John Mattocks, esqr., of Chicago, be duly notified, & be present at the taking of the same.

A. L. CUMMINGS,
Sol'r for Comp't.
M. M. COTHREN,
Solicitor for Defendants.

130 *Deposition of W'm C. Bostwick.*

Circuit court of the United States for the district of Wisconsin.

FREDERIC BRONSON, EXECUTOR OF THE last will & testament of Arthur Bronson, deceased,
vs.
EDWARD CHAPPEL, SENIOR, EDWARD CHAPPEL, junior, and John Chappel.
} In chancery.

The deposition of W'm C. Bostwick, of Chicago, a witness in behalf of def'ts, taken before Edward G. Mason, esq., special examiner, to be used in evidence in the above-entitled cause on the 25th day of August, A. D. 1868, pursuant to stipulation hereto attached.

John Mattox, esq., solicitor for the plaintiff, and M. M. Cothren, esq., solicitor for the defendants, attended at the taking of the testimony.

The said witness, after being duly sworn, deposes and says:

Int. 1. What is your name, present place of residence, and former place of residence?

Ans. My present place of residence is Chicago, Cook Co., State of Ill. I formerly resided in Galena, same State, from 1835 to 1865.

2 int. Are you acquainted with the pl'ff, Fred. Bronson, and the def'ts, Edward Chappel, senior, Ed. Chappel, junior, & John Chappel?

Ans. I am acquainted with the parties, pl'ff & def'ts.

3. Did you ever transact business for the plaintiff, Frederic Bronson, as executor of the last will & testament of Arthur Bronson, deceased, with the def'ts in this cause? If so, state when; the character of the business transactions; & the capacity in which you acted for the said Bronson.

Ans. I did transact business with said def'ts for Frederic Bronson, as ex'r aforesaid, and in the capacity, as I suppposed at the time, of
131 agent for the said Frederic Bronson, in his capacity of ex'r as aforesaid. I negotiated with them for the sale of certain real estate situate at Elk Grove, Lafayette Co., State of Wis., at a stipulated price per acre, subject to the approval of the said Frederic Bronson, and which approval was accorded, and the sale was consumated, according to the terms of the contract of the sale, by Mr. Bronson's executing, as executor aforesaid, a deed for said premises so contracted for to said defendants, taking at the same time from them a bond and mortgage of the premises sold to them as aforesaid. A certain portion of the purchase-money was paid down, and a mortgage of the

premises executed by the defendants for the balance, which amount was duly remitted to Mr. Bronson. A subsequent payment was made to me by the said defendants upon said purchase, according to the conditions thereof, the amount of which said second payment I do not now recollect. I think a receipt was given for it in my name. I certainly considered at the time that I was receiving it as the agent of Mr. Bronson. I considered so from the fact that for some 12 to 15 years preceding I had been in the habit of receiving offers for lands in Wisconsin belonging to the estate of Arthur Bronson, communicating such offers to Mr. Frederic Bronson, and, if accepted by him, was in the habit, during all that time, of receiving payments on such sales, and remitting the same to Mr. Bronson. His invariable method in selling lands was to execute to the purchasers a contract to deliver a deed to the purchaser upon the payment of the monies stipulated to be paid in said contract for said lands; by the terms of the contract, however, the payments were stipulated to be made to said Frederick Bronson, by the purchasers, in the city of New York. Somewhere about the year 1857, I think it was, at
132 the foot of some contracts forwarded to me by Mr. Bronson a memorandum in writing was made, to be signed by the parties to the contract, to the effect that the 1st or down payment was to be paid to me, (witness,) and all subsequent payments to be made to Mr. Bronson, in New York City. As this was a new feature of the contract, I called Mr. Bronson's attention to it in a letter to him written by me, and asking an explanation. He replied to that letter, to the best of my recollection, by saying in his letter that the object of that memorandum was simply to put beyond question his right under the contract to charge the rate of exchange at Galena on New York against the parties making payments to me at Galena. The letter was left with my son in Galena by me with my other files of letters, and will show for itself its precise terms. I speak from my best recollection of its contents. The course of the business was never changed or interfered with in consequence of this memorandum, but was conducted as it had previously been, and I continued to receive monies on contracts and remitting the monies to Mr. Bronson, acting as his agent, as I understood it. There were a large number of such contracts. Although by the strict terms of the contract the monies were payable in New York to Mr. Bronson, yet I considered that he waived that condition of the contract by assenting to my receiving the payments in Galena and remitting them to him. The exceptions to the mode of issuing contracts for sales of land by Mr. Bronson occurred only in the case of the sale to the defendants in this suit, they insisting upon receiving a deed and giving a mortgage. All the money they paid upon this purchase was paid to me. Higgins & Strother were originally the agents of Mr. Bronson in relation to his lands in Wisconsin. After they left Galena, M. O. Higgins,
133 brother of the Higgins of the firm of Higgins & Strother, and myself, formed a copartnership under the firm name of Bostwick & Higgins, became the agents of Mr. Bronson in relation to his lands. Afterwards Mr. Higgins left, and I continued and acted as sole agent. I advertised myself through the country as the agent of the Bronson lands, which advertising was continued for a period of 12 or 14 years.

(The witness desires to make the following explanation in relation to an affidavit made by him:)

Somewhere about the month of December, 1866, I think, Mr. Bronson called upon me at the hotel where I was stopping in the city of New York, and, after some conversation in relation to the monies that had been paid to me by defendants in this connection, called my attention

to the terms of the contract, which required payments to be made to him in the city of New York, and assumed, in view of those terms, that I was not, strictly speaking, or legally, his agent for the receipt of any other than the first payments specified in the contracts. I assented to this view, but suggested that the practice had been for me to receive all the payments. Mr. Bronson said that did not, nevertheless, constitute me his agent, except merely for the purpose of receiving said first payments. The fact is, that I was at the time seriously involved in pecuniary troubles & in my business, and was in a state of bewilderment that almost rendered me incapable of transacting business, and I felt apprehensive that Mr. Bronson might feel disposed to resort to some legal measures against me that might still further embarrass and distress me, & I very reluctantly got my own consent to sign a paper setting forth that I was not authorized in terms by Mr. Bronson to act as his agent. I was, moreover, at the time exerting myself
134 in making negotiations which I fain believed would relieve me from my embarrassments, and enable me to pay over to Mr. Bronson these monies, & save these defendants from trouble. I not only executed that paper with reluctance, but have never since ceased to regret having done so.

Cross-examination:

Int. 1. What was your business in Galena while you claimed to have had the agency of Mr. Bronson?

Ans. I was practising law, doing a general collecting business, and a banking business, and held during that time the office of county judge for several years.

2. What is your age?

Ans. I am 60 years of age.

3. What was your business in Galena, performed for Mr. Bronson?

Ans. My business was to receive offers for land, name his prices to parties, and send offers to Mr. Bronson.

4. Were you ever his general agent in regard to these lands?

Ans. I acted as his agent as far as I have mentioned; I considered myself as his agent for the purpose of selling his lands, as I have stated.

5. Who paid his taxes on these lands during this time?

Ans. Ex-Governor Nelson Dewey, of Cassville, Grant County, Wisconsin.

6. To whom did the lands sold to the Chappels, referred to, belong?

Ans. To the estate of Arthur Bronson, deceased.

7. In what behalf did Frederic Bronson act in the premises?

Ans. He acted as executor of the last will & testament of said Arthur Bronson.

135 8. In the mortgage taken from the Chappels, was any memorandum attached to the mortgage or the bond, such as you state as was annexed to contracts with which you were furnished by Mr. Bronson?

Ans. I think there was not.

9. At the time of the payment made by Chappels on said mortgage, who held the bond & mortgage?

Ans. Mr. Bronson, I think.

10. To whom was said 1st payment on the mortgage made?

Ans. I think it was paid to my son at my office, and he receipted for it in my name.

11. Did Mr. Bronson especially authorise you, at any time, to collect & remit monies due him, as executor on bond & mortgage?

Ans. On the bond & mortgage I do not recollect that he did expressly.

12. At what place did the mortgage executed by defendants provide that the monies should be paid?

Ans. In the city of New York.

13. Had you been in the habit of collecting other monies due Mr. Bronson, on account of bonds and mortgages held by him?

Ans. No, I had not; this being the only instance of a bond & mortgage being taken on the sale of land. In other & numerous instances of the sale of land on contracts I had been in the habit of collecting monies for him and transmitting it to him.

14. Did Mr. Bronson, at any time, ever approve or affirm the action you took in this particular transaction, or rather the action taken by your son in receiving the first payment on the mortgage?

Ans. No; I cannot say that he did.

136 15. Did Mr. Bronson, in any letters to you, or communications with you on the subject, expressly waive the conditions of the memoranda, or the purport thereof, which memoranda you state he caused to be affixed to certain contracts sent you for the sale of lands?

Ans. He did not expressly.

16. On what business were you engaged at the time you saw Mr. Bronson in the city of New York?

Ans. I was endeavoring to negotiate lead-mine properties.

17. Were you engaged in that business at the time of the interview with Mr. Bronson, before alluded to?

Ans. I was engaged in that business so as to detain me there for the time.

18. Did you at that interview assure Mr. Bronson that said business would, in your opinion, prove profitable to you?

Ans. I think it likely that I gave him such assurance.

19. Had you ever, or have you ever, paid Mr. Bronson the monies which you state the defendants paid your son Frank?

Ans. No; I have not paid it.

20. Were said monies ever paid to you by your son Frank?

Ans. They were credited in the cash account, and the said monies went into my general fund.

(Plaintiff here offers in evidence a copy of the affidavit referred to in his testimony, which copy is by agreement attached to and made part of this deposition, & is agreed to be a true copy of the original, and receivable the same as though it were the original itself.)

21. Will you examine the affidavit referred to, and state whether you signed and acknowledged the same?

Ans. That is the affidavit signed and acknowledged by me, and the addition thereto was signed by me and added at my request.

137 22. Was Mr. Bronson present at the time said affidavit was subscribed and sworn to by you?

Ans. He was not; Mr. Calhoun was the clerk of Mr. Bronson, and was present. It was made at the hotel where I was stopping; at French's Hotel.

23. Were not the statements made and sworn to by you in said affidavit substantially true and correct?

Ans. They were true according to the literal and technical terms of the contracts upon or under which the monies were received by me, but, in another sense, the statements therein contained would have to be received with some modifications.

24. What modifications do you refer to?

Ans. They are, for instance, whether Mr. Bronson had waived the conditions of the contracts, which made the payments due in New York, by continuing as a common practice, without dissent, to receive said payments through me, in view of a letter referred in my direct examination in relation to the endorsement on the contract.

25. Can you state where in any particular said affidavit is untrue? Please examine it.

Ans. I think it goes too far as to denying any authority to receive monies as Mr. Bronson's agent.

26. If said statement is in that respect untrue, how came you to make & swear to the statement?

Ans. I have attempted to explain that in my direct examination, and, perhaps, I need not say more here than that I came to conclusions that might more properly have been left to the courts to determine. I did not mean at the time to state what was untrue.

27. How long a time elapsed between your last interview with Mr. Bronson on the subject and the time of making said affidavit?

Ans. I am uncertain about that; my impression is that it was within a fortnight.

138 28. Did you not act in the matter of receiving payments from purchasers to Mr. Bronson as the agent of the purchasers, and not as the agent of Mr. Bronson?

Ans. In one sense, I acted as the agent of the purchasers, having reference merely to the terms of the contract, &, in another sense, I acted as the agent of Mr. Bronson, having reference to the practice of his receiving payments of purchasers through me, without dissent.

29. Do you not mean by your last answer that, in receiving monies from purchasers, you acted as their agent, but in remitting monies to Mr. Bronson you acted as his agent?

Ans. No; that is not strictly what I mean. I mean that I might be regarded as the agent of Mr. Bronson from the facts that I have stated from his acquiescence—from his receiving money without dissent.

30. In communication with Mr. Bronson on that subject, did you hold to that view of the matter?

Ans. I don't think that I had any argument or controversy with Mr. Bronson on that subject.

31. Did you have any communications with him on that subject aside from the affidavit; and, if so, what position did you take in regard to the matter?

Ans. Mr. Bronson called upon me at French's Hotel, to my best recollection, about a fortnight before I signed the affidavit, & in the conversation between us (altho' my recollection is not very distinct) I think Mr. Bronson took the ground that I was not acting as his agent in receiving monies of the defendants, but as their agent. My recollection is that I suggested to Mr. Bronson that I had uniformly received the monies and remitted to him; and I think he replied that that did not necessarily constitute me his agent in the face of the contract. He requested me at that time to sign a paper to the effect, I believe, that I was not authorized to receive monies for him, and under the pres-

139 sure of troubles and embarrassments that beset me at that time, and the fear that Mr. Bronson might take some legal measures against me, I did not, I think, enter into any argument with him, but drew up and signed a paper to the effect that I was not authorized to receive more than the first payment upon the sale to these defendants.

32. Did you furnish Mr. Bronson with that statement, and in what manner?

Ans. I furnished it to Mr. Bronson there. We went down stairs, and I wrote it, and gave it to him.

33. Will you look at paper marked Exhibit "A," & state whether it is the statement last referred to.

(Plaintiff offers statement marked Exhibit "A" in evidence, & makes it a part of this deposition.)

Ans. Yes; that is the paper writing referred to.

34. Will you state whether the statements therein made were believed by you to be true at the time said paper was drawn and signed by you?

Ans. I believe they were true, having reference, as I have before answered, to the terms of the contract, but might be questioned in view of the fact of my being in the practice for so long of receiving monies on account of Mr. Bronson.

35. You state in said Exhibit "A" that you were authorized by the terms of the sale to Chappell to receive, as the agent of Mr. Bronson, the first payment on said purchase, but all subsequent were to be made to Mr. Bronson in New York by said Chappel; &, in receiving from said Chappel any other than the 1st payments on his purchase, you acted as his agent to receive & remit the monies so paid, & not as the agent of Mr. Bronson. Was that statement subscribed by you true in point of fact?

Ans. It was true with the explanations made to the last interrogatory.

36. You state in said Exhibit "A" that you were never in fact authorized by Mr. Bronson to sell any of his lands, or any lands in
140 Wisconsin, but only authorized to receive offers or bids for such lands, and to transmit said offers to Mr. Bronson. Was that statement subscribed by you true in point of fact?

Ans. Yes.

37. You state in said Exhibit "A" that you acted, in receiving the 2d and subsequent payments on account of sales, as the agent of the purchasers to remit the payments to said Bronson. Was that statement so subscribed by you true in point of fact?

Ans. It is not true that I acted as the agent of such purchasers (these defendants) at the time I assumed to act, and did act in the capacity, as I regarded it, of the agent of Mr. Bronson.

38. When you accepted the payment from the defendants on said bond & mortgage, did you not do so with a view to accomodate them, instead of putting them to the trouble of remitting the payments to Mr. Bronson in New York?

Ans. That was really not the consideration. But the fact was that I considered that Mr. Bronson expected me to receive the money from them, & remit it to him.

Re-direct:

Int. How did you come to write and hand to Mr. Bronson the paper writing marked Exhibit "A?" State fully.

Ans. As I before have stated, I was overwhelmed with troubles and embarrassments in my business, and not the least of my burdens was this very item of the Chappell's payment, and I had greatly dreaded to see Mr. Bronson, and had avoided him as much as possible until I should be in a position to settle with him. He came upon me at French's Hotel entirely unexpected, and I was exceedingly disconcerted, confused, and depressed. Mr. Bronson, after a short conversation, proposed to

me to sign a paper disavowing my agency in relation to his business, and intimated to me the purport of such writing which he wished to obtain. I tried to evade it, desiring a little time for reflection, but he insisted upon it being done at once, and himself procured the paper of the clerk upon which the writing is made. We sat down together at a table, and I wrote the paper, writing generally from intimations which he had given me of his views and wishes in the premises; but, I think, at his express dictation, I wrote that portion of the paper writing which disaffirms my agency in relation to the Chappel matter. I do not think, if I had had time for and been in the frame of mind for calm reflection, that I would have signed the paper. In regard to the affidavit, I may say that I was in an equally disturbed state of mind when Mr. Calhoun called on me to sign the affidavit. If I had been a frame of mind favorable to due deliberation and reflection, I should not have signed the affidavit.

W'M C. BOTSWICK.

Copy.

STATE OF NEW YORK,
City and County of New York, ss:

Personally appeared before me (Walter H. Calhoun, a notary public in and for said city and county) William C. Bostwick, late of Galena, in the State of Illinois, who, being by me duly sworn, doth depose that he has read the affidavit of his son, Frank Bostwick, dated January 18th, 1867, and that the same is incorrect; that the said Frank entirely misunderstood his (William C. Bostwick's) relations with Frederic Bronson, of the city of New York; that the agency of said Bostwick extended only to receiving offers for lands, and transmitting the same to said Bronson for his acceptance or rejection, at his discretion; and that, when contracts were accepted, they were prepared by said Bronson, and executed by him, and forwarded to the said Bostwick for delivery to the parties purchasing; that said contracts always provided that all the purchase-money should be paid to said Bronson, in the city of New York, except in some cases the said Bronson authorized by a supplemental article in writing that the first or cash payment provided in said contract might be paid to the said Bostwick for said Bronson; but that the said supplemental article also provided that all other payments except the first should be paid to him, the said Bronson, in the city of New York; that he was never the authorised agent of said Bronson to sell or lease his lands in Wisconsin, or Illinois, or elsewhere; that he was never authorised to collect and receive monies for said Bronson, except as above excepted; and that all other payments made to him by the persons indebted to said Bronson were made to him not as the agent of said Bronson, but as the agent of the persons paying him the money to remit the same to the said Bronson; that he was never authorised to sign the name of said Bronson as his attorney, and never had any written or verbal power from said Bronson to act for him in any way, except as above stated; and that he never said to any person that he had such power; and has never sold or contracted to sell any of his lands as such attorney.

W'M C. BOSTWICK.

Subscribed and sworn to before me in the city of New York this 25th day of February, A. D. 1867.

WALTER H. CALHOUN,
Notary Public City and County of New York.

CITY AND COUNTY OF NEW YORK, *ss:*

I hereby certify that the foregoing affidavit of William C. Bostwick is a true copy of the original, and that all the facts therein stated were sworn to before me on the day and year above stated.

Witness my hand and official seal this 14th day of March, A. D. 1867.

[SEAL.] WALTER H. CALHOUN,
Notary Public City of N. Y.

143 This deponent further says, upon his oath, that he has no doubt his son Frank fully believed in the fact stated in his affidavit, and testified under a misapprehension in regard to the real facts of the case. The deponent further says, in modification of the last clause of the above affidavit, that he never said to any person that he was authorised to sell, or contract to sell, any of said Bronson lands without the assent of said Bronson to such sale.

(S'd) W'M C. BOSTWICK.

A.

Letter of W'm C. Bostwick to Bronson.

FRENCH'S HOTEL,
New York, Feb'y 7, 1867.

FREDERIC BRONSON, Esqr., *New York.*

DEAR SIR: In reply to your inquiries of this date, I have to say that, in making sale of lands in Wisconsin, under your instructions, I was only authorized to sell subject to your approval & confirmation of such sales, & was only authorized to receive & receipt to purchasers for the first instalment or payment of the purchase-money of said sales, & that, in all payments made to me subsequently by such purchasers, I acted in receiving such payments, not as your agent, but as the agent of the party making such payment, & undertaking merely, as the agent of said party, to remit the payment to you. I was authorised by the terms of the contract of sale to Chappel to receive, as your agent, the first payment on said purchase, but all subsequent were to be made to you, in this city, by said Chappel; &, in receiving from said Chappel any other than the first payment on his purchase, I acted as his agent to receive & remit the money so paid, and not as your agent.

I was never in fact authorized by you to sell any of your lands, or any lands in Wisconsin, but only authorized to receive offers or bids for such lands, & to transmit said offers to you. The contracts for sale were all made by you.

144 Yours, very respectfully,

W'M C. BOSTWICK.

STATE OF ILLINOIS,
County of Cook, City of Chicago, ss:

I, Edward G. Mason, a notary public in and for the said city of Chicago, in said county and State, and special examiner in the above-entitled cause, do hereby certify that the deposition of William C. Bostwick, of Chicago, a witness whose name is subscribed to the foregoing deposition, was taken before me, as such notary public and special examiner, on the 25th day of August, A. D. 1868, pursuant to stipulation hereto attached; that John Mattocks, esqr., solicitor for the plaintiff, and M. M. Cothren, esq., solicitor for the defendants, attended at the

taking of the testimony of said Bostwick; that, previous to the commencement of the examination of said Bostwick as a witness in said suit, he was duly sworn by me to testify the truth in relation to the matters in controversy between said plaintiff and said defendants so far as he should be interrogated by me concerning same; that said deposition was taken in my office, No. 13 Dickey's Block, in said city of Chicago; and that, after said deposition was taken by me as aforesaid, the interrogatories and answers thereto were read over by said witness, and that thereupon the same was signed and sworn to by said deponent, William C. Bostwick, before me, at the place and on the day and year last aforesaid.

Witness my hand and notarial seal.

[SEAL.] EDWARD G. MASON,
Notary Public and Special Examiner.

Commissioner's fees, $10.

Letters.

No. 50 WALL ST.,
New York, Dec. 22d, 1866.

Mess. EDWARD CHAPPEL, SR. & JUN'R, and
JOHN CHAPPEL, *Elk Grove, Lafayette Co., Wis.*

GENTLEMEN: There became due and payable, on 30th Nov., 1865, on your bond and mortgage to me, (for $5,343 60:)

145	An instalment of	781 20
	With int. from Feb'y 13, '65, 9 m's 17 d'ys	43 60
Also due Feb'y 13, '66, an instalment of		651 77
And 12 mo's int. on $4,562 40		319 37
	All which remain unpaid	$1,795 94

I have, therefore, to request that you will cause to be paid to me, in this city, without delay, said amount of $1,795 94, with interest added thereto, until such payment is received by me, viz., int. from Nov. 30, '65, on $824 80, and from Feb'y 13, '65, on $971 14, to the date that your remittance will reach me.

Respectfully, yours,

FREDERIC BRONSON, *Ex.*,
No. 50 Wall st., N. Y.

Reply.

ELK GROVE, *Jan'y 7*, 1867.

FREDERIC BRONSON, Esqr., *New York.*

DEAR SIR: Yours of the 22 Dec'r was duly received. We are surprised to hear that you have not received the instalments you complain of in your letter. We have paid them as they became due, for which we hold Mr. Bostwick's receipts of both principal and interest. We will also be prepared to meet the next payment when due. Will you please inform us who is your present agent, as we learn Mr. Bostwick has left Galena?

Yours, truly,

EDWARD CHAPPEL, JR.

NEW YORK, *Jan'y* 12, 1867.

EDWARD CHAPPEL, Jr., *Elk Grove.*

DEAR SIR: I am much surprised & sorry to hear that you have paid monies due to me on your bond & mortgage to Mr. Bostwick, who was never authorised by me either to receive the payment or to give receipts therefor in my name. By referring to your bond you will perceive that the condition of the bond is that the money should be paid to me in this city. I have no agent, and never had any agent, authorised to
146 receive money for me in Galena, except as it related to the first payment on contracts. As to those, I made an especial exception in writing that they might be received by the party through whom the sales were made and the contracts exchanged, but all other and future payments were to be made to me personally in the city of New York. Mr. Bostwick was never authorised to sell my lands, nor collect the payments, other than the cash payment. If parties in Wisconsin elected to employ him to remit monies to me on account of their contracts, he acted as their agent and not as mine; and if there should be any loss through his default, it should be theirs & not mine. I have neither seen nor received any communication from Mr. Bostwick for many months, except a short note within the last month, & do not know anything about his private business & embarrassments. The proper mode for you tc remit to me funds is by a good bank draft on a good bank in this city, payable to my order. I have some land adjoining the tract you purchased. Will you favour me with your opinion of its value on the usual terms of credit: ¼ cash, and residue in 4 equal annual payments; int. @ 7%?

Yours, truly,

F. BRONSON, *Executor.*

NEW YORK, *Jan'y* 31, 1867.

EDWARD CHAPPEL, Jr., Esqr., *Elk Grove, Wis.*

DEAR SIR: I rec'd this morning your letter of the 19th inst. I am sorry to see by your letter that you think I would be induced to misrepresent to you the relation that existed between me and Mr. W'm C. Bostwick, as your letter and the inclosed affidavit of F. Bostwick implies. If either Mr. W'm C. Bostwick or his son told you that he held a power of attorney from me, either to sell lands or to collect the monies due on contracts or bonds, and to receipt for the same in my name, they told you what was not true. Mr. Bostwick never had any general power of attorney from me, never had authority to sell any of my lands, never had any authority to receive any money for me,
147 except the first payment on contracts, and in those cases I wrote at the foot of the contract special authority to receive the cash payment, but that all other payments were to be made to me in the city of New York, thus giving a limited and special power only for the first payment on each contract. I cannot be held liable for what Mr. Bostwick's son shall choose to swear to, and his affidavit cannot establish a power. It is quite notorious to everybody that Mr. Bostwick received proposals to purchase my lands, and transmitted them to me, and such proposals were accepted or rejected by me. I never authorised him to sell any lands in my name, and know of no instance where he has done so. All contracts were made by me personally. You ought, before paying him money, to have asked him to show you his power to receive it, and his inability to do so would have shown you that, if you entrusted him with the money, he acted as your agent and

not as mine. You were very careful before you paid any money to require my individual contract to sell, and my deed, showing you were not willing to rely on him for that purpose. If you had shown the same prudence and course in paying the instalments due on your bond, this loss would not have happened. It must be manifest to you that an authority to act as an agent cannot be established by the assertion of the party, & my correspondence with him will show that he never had any such power. You will doubtless recollect that, when you first proposed to buy the land at Elk Grove, I forwarded a contract for sale, and that contract expressly stated in writing at foot that the first payment might be made to Mr. Bostwick, but that all other payments were to be made to me, which was notice to you how far he was authorised to receive money for me, to wit, the first payment only, and all
148 other payments to be made to me in this city, and not to him. You afterwards proposed to have a deed, and to execute a bond & mortgage. I sent them to Mr. Bostwick, with directions to deliver the deed on receiving your bond & mortgage. I sent them to Mr. Bostwick, with directions to deliver the deed on receiving your bond & mortgage; and those papers expressly stipulated that you should pay to me in this city. I am very sorry that Mr. Bostwick should have betrayed your confidence; but as he acted as your agent and not as mine, the loss should be yours and not mine. In this matter I acted as executor, and, as such executor, the debt is owing to the legatees, who will not recognize any payment not paid to the executors. I should like to know what may be your decision in the matter, as a matter of this sort ought not to be left open. I will thank you for an answer by the returning mail.

Truly, yours,

F. BRONSON,
Ex'r of A. B.

P. S.—I beg to call your attention to the fact that more than 30 days' default has occurred on your bond & mortgage, & that by the terms of the bond the whole amount of the bond is now due.

F. BRONSON, *Executor.*

NEW YORK, *Feb'y* 11, '67.

EDWARD CHAPPEL, Esqr., *Elk Grove, Wis.*

D'R SIR: The terms of your bond require you to pay the instalments of principal & interest in this city. I have no agent, and never had any agent in Illinois or Wisconsin authorized to receive such payments for me. I do not see that it is necessary for you to know the names of the national banks in this city. I presume that there are national banks in Galena who will transmit money for you if you desire it.

Very respectfully, yours,

F. BRONSON, *Ex'r, &c.*

NEW YORK, *Feb'y* 23, 1867.

EDWARD CHAPPEL, Jr., Esqr.

149 Copy of Mr. Chappel's letter to F. B., dated Feb. 18, '67, and F. B. reply thereto, dated Feb'y 23, '67, sent to A. L. Cumings, February 14th, 1868.

Also sent to Mr. Cumings, February 14, '68, copy of Chappel's letter, dated Feb'y 8, '68, & F. B. reply of Feb'y 12, '68.

Stipulation as to above copies of letters.

It is hereby agreed that the foregoing copies of letters, written by Frederick Bronson & by Edward Chappel, jr., may be used in evidence on the hearing of the case of Bronson vs. Edward Chappel, sen'r, and others, the same as the originals might be used, & subject to the same objections; but that if the originals shall be produced they shall be read instead of the copies.

Sept. 23, 1868.

M. M. COTHREN,
Solicitor for Defts.

Letters of Chappel to Bronson.

ELK GROVE, *Jan'y* 19, '67.

Mr. FREDERIC BRONSON, Esqr., *New York.*

DEAR SIR: Yours of the 11th inst. is received, and we still claim that Mr. W'm C. Bostwick was your authorised agent, and in proof of the fact we inclose you the affidavit of Mr. Frank Bostwick. You refered us to the bond, where it says that the money was to be paid to you in New York.

150 We claim that had reference to paying the exchange on the monies from Galena to New York, and Mr. W'm C. Bostwick informed us that that was what you had ref*f*erence to at the time we signed the bond.

Yours, truly,

EDWARD CHAPPEL, JR.

ELK GROVE, *Feb'y 6th*, 1867.

Mr. FREDERIC BRONSON, Esqr., *New York:*

DEAR SIR: The third instalment will be due in a few days, and we are prepared to meet it. But we find that we will not be safe in remiting money to you in New York, as we do not know the names of any banks in that city, but would prefer that you should appoint some agent in this neighbourhood, so that we could have a receipt for the money when paid. We will also, as in the former instalments, pay the exchange to you in New York City.

Very respectfully, yours,

EDWARD CHAPPELL, JR.

Letters of W. H. Calhoun to Bostwick.

NEW YORK, *May* 12, 1863.

W'M C. BOSTWICK, Esqr., *Galena:*

DEAR SIR: I have your favour of the 5th instant, covering tax receipt for taxes, 1862, on lands of Guy Richards, esqr., in Iowa Co., Wisconsin, amounting, including fees for paying same, to $37 73. As I have no account open with you on my books, I beg leave to inclose herewith to you Mr. Richards' check of yesterday's date, for the same amount, payable to your order. Mr. Richards has in his possession a tax deed for 1858 for S. E. ¼ of N. E. ¼ of 1, 6, 1, registered in Grant Co., April 15th, 1861, at 1 o'clock p. m., and recorded in book O² of deeds, page 206; also a certificate of tax sale, dated Lancaster, Sept. 6, '59, for the tax of 1858 on the S. E. ¼ N. E. ¼ 1, 6, 1, which latter certificate I herewith inclose to you as requested, being the only one that he can find, he having made a rigid search for the others called

151 for by you without success, although a memorandum made by the writer of this shows that a tax deed (the one above alluded to) & two cer'f't's of tax sale were delivered to him June 26, '62. If the missing cer'f't's cannot be produced, what further will be required?

Mr. Richards is very anxious to close out all his lands under your charge, & has requested me to ask you to forward applications to him, &, such as are accepted, the terms will be one-half cash, & balance in 12 months.

Yours, truly,

WALTER H. CALHOUN.
For Frederic Bronson.

NEW YORK, *May* 13, 1863.

W'M C. BOSTWICK, Esqr.

MY DEAR SIR: Since my letter to you of yesterday, I find that on the 25th June, 1862, Mr. Richards inclosed to you a cerft. of tax sale entitling him to a deed in Sept., 1863, for land in 1, 6, 1, with the request that you keep the cerft. "conspicuously before you that the matter may not be overlooked." This cerft., with the one inclosed to you yesterday, will undoubtedly in due time bring Mr. Richards his tax deed.

Yours, very truly,

WALTER H. CALHOUN.

NEW YORK, *March 23d*, 1865.

MY DEAR MR. BOSTWICK: I owe you an apology for my long neglect in replying to your esteemed confidential letter of the 23d February. It should have been answered the moment I rec'd it, but I have been so much pressed for time during my hours at the office that I have not attended to you as I otherwise should have done. Your letter is friendly, and I am happy to acknowledge it from a friend.

Any inaction on the part of any of Mr. Bronson's correspondents would be noticed and spoken of by him, and if you will allow me
152 to express the sentiment of the office, as far as you are concerned, I will simply say that you are held by Mr. Bronson as one of his most favoured, valuable, and esteemed correspondents, and that in the discharge of your duties for him he considers his interests have been carefully and scrupulously studied.

Mr. Bronson aims to have none but in whom he can place the strongest reliance—men of ability, integrity, and standing; for it is apparant that he must, in the multiplicity of his large landed interests in the different sections of the West, be governed, in a great measure, by them in deciding upon sales, and you are classed the foremost. I say it without flattery that I have, on more than one occasion, during the long number of years that I have been in Mr. Bronson's office, remarked that there is no one of all his correspondents (and then I had not the pleasure of a personal acquaintance with you) that is so prompt and so corteous in his correspondence than my esteemed friend in question, and this feeling has been strengthened since I had the honor of forming your acquaintance in September last in this city.

I hope you will excuse me if it may appear to you that I have shown more warmth in my expressions than the present occasion warranted, and beg you will attribute it solely to my desire to make manifest, in plain language, the esteem in which you are held by Mr. Bronson and all connected with his office, of which must be included—

Your friend,

WALTER H. CALHOUN.

FENNIMORE, WIS., *Nov. 21st*, 1865.

W'M C. BOSTWICK, Esqr.

DEAR SIR: Yours of the 15th inst. was duly received. Mr. Vance thinks that he has offered all for the land in question that it is worth, & all that he can afford to pay. He will pay, in addition to his offer, for stamps.

153 I will inform Neiman that his deed for E. ½ of N. E. ¼ of 29, 6, 2 W., is in your hands.

Yours, truly,

H. A. W. McNAIR.

P. S.—You will please let me know immediately when you receive Mr. Bronson's final answer in regard to the offer of Vance.

H. A. W. McNAIR.

Stipulation.

Circuit court of the United States for the district of Wisconsin.

FREDERIC BRONSON, EX'R,
vs.
EDWARD CHAPPEL, SEN'R, EDWARD CHAPPEL, jun'r, & John N. Chappel.

It is hereby stipulated that the within notice and affidavits may be used in evidence upon the hearing of the above cause, the same as though the depositions of the witnesses had been formaly taken, & subject to the same objections.

Sep. 23d, 1868.

A. L. CUMMINGS,
Sol'r for Comp't.

STATE OF ILLINOIS, *County of J. Daviess, ss:*

James B. Brown, being duly sworn, deposes and says that he is one of the publishers of the Galena Gazette, a newspaper published in Galena, Illinois, and that the advertisement hereto attached has been in that paper continuously from November, A. D. 1863, up to May, A. D. 1865; & further saith not.

JAMES B. BROWN.

Subscribed & sworn to before me this 23d day of September, A. D. 1868.

D. W. JACKSON,
U. S. Commissioner, Northern Dist. of Illinois.

"W'm C. Bostwick, attorney and counsellor at law, and loan and collection office—

"Has for sale all the 'Bronson lands' in Wisconsin, embracing over 18,000 acres.

154 "Also, several thousand acres of other land in Wisconsin and Illinois, and several houses and lots in Galena. Liberal time given to purchasers.

"W'M C. BOSTWICK.

"☞ Business at Springfield land office and General Land Office at Washington attended to.

"Galena, Jan. 4, 1856."

STATE OF WISCONSIN, *County of Jo Daviess, ss :*

Horace H. Houghton, being duly sworn, deposes and says that he was one of the publishers of the Galena Gazette and Advertiser, & that the notice above attached was published in said newspaper from the date thereof until November, A. D. 1863; & further saith not.

HORACE H. HOUGHTON.

Subscribed & sworn to before me this 23d day of Sep., A. D. 1868.

D. W. JACKSON,
U. S. Commissioner, North'n Dist. of Illinois.

End of testimony.

Order of Sept. 6th vacated, &c.

OCTOBER 6, 1869.—On the motion of complainant by his solicitor, as herein filed, it is ordered by the court that the order of September 6th, 1869, extending the time for taking testimony, be and hereby is vacated, the same having been made by mistake, and that the depositions taken in pursuance of said order be suppressed. And it is further ordered that the motion filed August 3, 1869, to suppress testimony be overruled.

And now, at this same term, to wit, September term, A. D. 1869, and on the eighteenth day thereof, to wit, on the eighteenth day of October, A. D. 1869, the following proceedings were had, to wit:

Finding of court & order of ref.

155 JOHN J. TOWNSEND, EXECUTOR OF FREDERIC BRONSON, deceased, who was executor of ARTHUR BRONSON, deceased,
vs.
EDWARD CHAPPELL, SENIOR, EDWARD CHAPPELL, junior, & JOHN N. CHAPPELL. } In equity.

This day, on consideration of the pleadings and proofs, and of the arguments of counsel, it is ordered, as the finding of the court, that the portions of the debt secured by the bond and mortgage mentioned in this bill, maturing November 30, 1865, February 13, 1866, and February 13, 1867, including the entire interest on the whole debt, was fully paid by defendants to complainant or his agent, within thirty days after they respectively matured and before the bringing of this bill; and that the complainant should have a decree for six hundred and fifty-one dollars and seventy cents, being that portion of said debt, maturing February 13, 1868, with interest at the rate of seven per cent. per annum on that sum from February 13, 1867, and that reference be made to a master to compute and report the amount, and also to compute and report the amount to become due to the said complainant, and whether the mortgaged premises can be sold in separate parcels without injury to the interests of the parties.

And came Edward Kurtz, esqr., the master to whom it was referred, and made report that the sum of seven hundred and seventy-five dollars and ninety eight cents is due, and the sum of two thousand six

hundred and seven dollars and eight cents, with interest from February 13, 1867, is yet to become due the said complainant; and that the mortgaged premises may be sold in separate parcels without injury to the interests of the parties.

Which report is as follows:

156 *Master's report.*

Circuit court of the United States of America for the district of Wisconsin.

JOHN J. TOWNSEND, EXECUTOR OF FREDERIC Bronson, deceased, who was executor of Arthur Bronson, deceased,
vs.
EDWARD CHAPPELL, SENIOR, EDWARD CHAPpell, junior, & John N. Chappell.
} In equity.—Chancery B, page 436.

To the judges of the circuit court of the United States of America for the district of Wisconsin:

In pursuance and by virtue of an order of this court made in the above cause, and bearing date the eighteenth day of October, in the year of our Lord one thousand eight hundred and sixty-nine, by which it was referred to me, being one of the masters of this court, to compute, ascertain, and report the amount due and to become due to the complainant for principal and interest on the bond and mortgage mentioned and set forth in the bill of complaint filed in this cause, and whether the mortgaged premises can be sold in separate parcels—

I do respectfully certify and report that I have been accompanied by the counsel for the complainant, and have computed and ascertained the sum of seven hundred and seventy-five dollars and ninety-eight cents, ($775 98,) to be the amount due the complainant in the cause on the said bond and mortgage for the principal and interest up to and including the date of this my report, and the sum of two thousand six hundred and seven dollars and eight cents, with int. from Feb. 13, 1867, to be the amount yet to become due; and that the mortgaged premises can be sold in separate parcels without injury to the interests of the parties.

And I do further certify and report that the schedule hereunto annexed, marked "A," and making a part of this my report, contains
157 a statement and account of the principal and interest moneys due and to become due to the complainant as aforesaid, the period of the computation of the interest and its rate; and to which, for greater certainty, I refer.

All which is respectfully submitted, October 18th, 1869.

EDWARD KURTZ,
Master in Chancery.

Schedule A, referred to in the preceding report.

Bond of Edward Chappell, sr., Edward Chappell, jr., and John N. Chappell to Frederic Bronson, executor, &c., conditioned for the payment of $5,343 60 as follows: $781 20 on 30th November, 1865, and the balance in seven equal annual payments of $651 77 from the 13th February, 1865. According to the finding of the court—

The only payment now due and unpaid is that due Feb. 13, '68	$651 77
And interest from Feb'y 13, 1867, to this date 2y. 8m. 5d. @ 7 per cent.	122 28
Exchange on New York—¼ per ct. on $774	1 93
Amount due this day	$775 98

Amount to become due: The installments due February 13th, 1869, February 13th, 1870, February 13th, 1871, and February 13th, 1872, for $651 77 each, and interest on the same from February 13th, 1867, at seven per cent. per annum until paid, making in all the sum of two thousand six hundred and seven dollars and eight cents, with interest, yet to become due the said complainant.

Milwaukee, October 18, 1869.

EDWARD KURTZ,
Master in Chancery.

Decree.

This day this cause came on to be heard at this term upon the bill, answer, replication, and proofs, and was argued by counsel, and thereupon, upon consideration thereof—

It was ordered, adjudged, and decreed by the court as follows, to wit: That the report of Edward Kurtz, a master of this court, wherein the sum of seven hundred and seventy-five dollars and ninety-eight cents appears to be due to the said complainant at the date of said report on the bond and mortgage in said bill mentioned for principal and
158 interest, and the sum of two thousand six hundred and seven dollars and eight cents, with int. from Feb. 13, 1867, is yet to become due, be, and is hereby, confirmed.

It is therefore, on motion of A. L. Cummings, of counsel for said complainant, further ordered, adjudged, and decreed, and this court doth hereby order, adjudge, and decree, that all and singular the mortgaged premises mentioned in the bill of complaint in this cause and hereinafter described, or so much thereof as may be sufficient to raise the amount due to the complainant for principal, interest, and costs in the cause, (and which may be sold separately, without material injury to the parties interested,) be sold at public auction, under the direction of the marshal for this district, unless said mortgagors, previous to such sale, shall pay to said complainant the said sum of seven hundred and seventy-five dollars and ninety-eight cents, and interest thereon from this date, together with the costs in this cause to be taxed.

And it is further ordered that said sale may be made at the post office in the city of Milwaukee, in the county of Milwaukee, within this district, and that said marshal give public notice of the time and place of such sale by advertisement published in some newspaper printed in Lafayette County at least once in each week for six successive weeks previous to the day of sale; and if no newspaper be printed in such county, then such notice shall be published in a newspaper published in an adjoining county in said district; and that said complainant, or any of the parties to this cause, may become the purchaser thereof; and that said marshal execute, under his hand and seal, and deliver to the purchaser or purchasers at such sale a certificate or certificates of sale of the mortgaged premises by him sold, therein setting forth the tract or tracts, lot or lots of land by him sold to such purchaser or purchasers, the sum paid for each tract, and that the pur-

chaser or purchasers will be entitled to a deed therefor at the expiration of one year from the date of said sale, unless the same shall sooner be redeemed according to law; and that said marshal cause duplicates of such certificates to be filed, within ten days after such sale, in the office of the register of deeds of Lafayette County; and that said marshal pay to said complainant, or his solicitor, out of the proceeds of such sale, the costs in this cause to be taxed, and also the aforesaid sum of seven hundred and seventy-five dollars and ninety-eight cents, and interest thereon from this date to the day of such sale, or so much thereof as the purchase-money of the mortgaged premises will pay; and that said marshal take a receipt for the amount so paid, and file the same with his report of sale; and that he bring the surplus moneys, if any there be, into court without delay, to abide the further order of the court.

And it is further ordered, adjudged, and decreed that the defendants, and all persons claiming, or to claim from or under them, be forever barred and foreclosed of and from all equity of redemption, and claim of, in, and to said mortgaged premises, and every part and parcel thereof, subject to the right to redeem said premises within one year from the day of sale, according to law.

And it is further ordered and decreed that the purchaser or purchasers of said mortgaged premises at such sale be let into the possession thereof; and that any of the parties to this cause, who may be in possession of said premises, or any part thereof, and any person who, since the commencement of this cause has come into possession under them, or either of them, deliver possession thereof to such purchaser or purchasers on production of the deed of said marshal for such premises, and a certified copy of the order confirming the report of sale in this cause.

And it is further ordered and decreed that if the moneys arising from such sale are insufficient to pay the amount due to the complainant as aforesaid, with interest and costs, that the said marshal specify the amount of such deficiency in his report of the sale, and that, on the coming in and confirmation of said report, the defendants, Edward Chappell, sr., Edward Chappell, jr., and John N. Chappell, who are personally liable for the payment of the debt secured by said mortgage, pay to the complainant the amount of such deficiency, and with interest thereon from the date of such report; and that the complainant may have execution therefor.

And in case the amount reported as actually due, with interest and costs of this suit, shall be paid before such sale, it is further ordered and decreed that said complainant shall be at liberty, at any time hereafter, when any principal sum or interest secured by said bond and mortgage shall become due, according to the conditions of said bond and mortgage, to go before a master, on the foot of this decree, and procure a report of the amount which shall then be due thereon, to the end that upon the coming in and confirmation of such report a decree may be made for a sale of said premises to satisfy the amount which shall then be due, with interest and the costs of such report and sale.

And in case said premises shall be sold under this decree, and shall not produce sufficient to satisfy the amount so reported as actu-
159 ally due, and the amount reported to become due, with interest and the costs of this suit and such sale, it is then further ordered that the said complainant be at liberty at any time thereafter, when any such deficiency of principal or interest shall have become due, according to the conditions of said bond and mortgage, to apply to this court

for an execution against said defendants, Edward Chappell, sr., Edward Chappell, jr., and John N. Chappell, (who are personally liable for the payment of the debt secured by the said mortgage,) to collect the amount which shall then be due thereon.

The description of the property authorized to be sold under and by virtue of this decree, so far as the same can be ascertained from the mortgage above referred to, or from the bill of complaint in this cause, is as follows, viz:

All those certain pieces or parcels of land situate, lying, and being in the county of Lafayette, and State of Wisconsin, known and distinguished as the southwest quarter and the south half of southeast quarter of section thirty-three, in township three, of range one, (S. W. ¼ and S. ½ of S. E. ¼ 33, T. 3, R. 1,) excepting and reserving, however, therefrom that portion conveyed by the deed of Frederic Bronson, executor, &c., to Stephen Webster, of Feb. 13, 1865, described and bounded as follows: Commencing at the northwest corner of northwest quarter of southwest quarter; running thence south nineteen chains thirty-four links; thence east three chains to the centre of the Mineral Point and Galena road; thence north three and three-quarter degrees east nineteen chains thirty-five links; thence west four chains twenty-three links to the place of beginning, containing seven acres of land, more or less; and, also, that portion conveyed by the deed of Frederic Bronson, executor, &c., to Joseph Thomas, dated Feb. 13, 1865, bounded and described as follows: Commencing at the southwest *quarter* of the southwest quarter of the southwest quarter of said section thirty-three; running thence north twenty chains fifty-five links; thence east three chains to middle of the Mineral Point and Galena road; thence south three
160 and one-quarter degrees, west twenty chains fifty-nine links; thence west one chain seventy-five links to the place of beginning, containing four acres and eighty-eight hundredths of an acre more or less. The land hereby intended to be conveyed containing two hundred and twenty-eight acres and twelve one-hundredths of an acre, after the above reservations, be the same more or less; subject, nevertheless, to the right of a public highway across said land running from Mineral Point to Galena.

A. G. MILLER.

Decree signed, recorded, and enrolled October 18th, A. D. 1869.

EDWARD KURTZ, *Clerk.*

NOVEMBER 6TH, 1869.--This day came the complainant by his solicitor and filed his petition and motion for a rehearing as follows:

Petition for rehearing.

UNITED STATES OF AMERICA,
District of Wisconsin, ss:

In United States circuit court of the district of Wisconsin, to the September term, A. D. 1869.

JOHN J. TOWNSEND, EX'R, &C., *vs.* EDWARD CHAPPELL, SR., ET ALS. } In equity for foreclosure of mortgage.

The petition of John J. Townsend, the above-named complainant, shews as follows:

To Hon. A. G. Miller, judge, &c., in equity:

Your petitioner asks the setting aside the finding & decree in the above-entitled cause, rendered at the present term of said court, for causes appearing in the record, & matters of law arising on the record, and among others specifies as follows:

1st. The court overruled the motion filed August 3d, 1869, for suppression of certain testimony in said motion specified, as secondary, irrelevant, & tending to change the written contract sued on by parol.

This testimony consisted of suppositions & impressions of wit-
161 nesses to a considerable extent, of letters of Bronson & Elias L. Smith to Bostwick about other contracts with other parties, all written before the contract sued on was executed, & of declarations of Bostwick made at the time the written contract was executed. This ruling was excepted to, & was clearly wrong.

No principle of evidence is better settled than this, that no parol proof, outside the contract, shall be heard to change a written contract. A waiver of the terms of a contract, or an agreement to substitute something in place of performance, or to accept as a performance something less than or different from the contract may be made subsequently, but not before or at the time of the contract. All that preceds or is contemporaneous with the written contract is merged in the written contract.

2nd. The finding & decree are not sustained by the proof as admitted and passed upon by the court. Bostwick's statements of his authority agree with those of Mr. Bronson & Mr. Calhoun, & with the so-called involuntary affidavit of Bostwick.

From all this testimony it is clear that his authority was limited to receiving bids for the land & receiving the first or cash payment under the contract. A careful examination of Bostwick's deposition shows that he paid no taxes on the Bronson lands, & had no care of said lands, except to solicit bids & act as a broker in their sale. He says, "Ex-Governor Dewey, of Cassville, Wisconsin, paid the taxes on the Bronson lands." All other acts that were done by him for Mr. Bronson were specially authorised by letters or otherwise, & not done under any supposed general authority from Mr. Bronson to act as his agent. This testimony explains all the vague & general testimony in regard to agency, & shows what his authority actually was. True, Bostwick says,

he supposed at the time he was authorized to receive the pay-
162 ments, but it is not held that were suppositions constitute testimony. If it were a trial of Bostwick for receiving money under false pretences, his intention might be shewn; but on the bare question of legal authority we must rest on facts proved, & not on his suppositions. It is claimed that a mere agent, whether general or special, cannot change of his own motion the terms of a contract, or waive a strict compliance therewith, unless specially authorised so to do by his principal after the making of said contract, either by directly authorizing the act or impliedly by putting said contract in his hand to be thus performed.

3d. It does not appear in the testimony that the money was paid to Bostwick by Chappell under the supposition that he had possession of the bond. On the contrary, it is indicated that they paid the money to him to remit for them as their agent. In the depositions suppressed by the court, which were taken under the order which was afterwards vacated, the defendants undertook to shew that they did not know the bond had been sent to New York. This the defendants rightly con-

sidered a matter important to be shewn, & by these suppressed depositions undertook to supply the omission. It appears, then, from the record, (as was doubtless the fact,) that defendants, by their own negligence in not ascertaining his authority, sustained or at least contributed to the loss.

4th. It is claimed, also, that said finding & decree should not only have been for the payments wrongfully made to Bostwick, as is claimed, but also the full amount due on said bond, under the agreement that the whole of said sum under default in any payment should at once be due & payable.

For the above reasons, with others not here specified, your petitioner respectfully prays a rehearing of said cause, in order that justice may be done the estate of Arthur Bronson, dec'd, represented by him.

163 And your petitioner, as in duty bound, will ever pray, &c.

JOHN J. TOWNSEND, *Ex'r, &c.*,
By A. L. CUMMINGS, *his Solicitor.*

Motion for rehearing.

U. S. circuit court, Wis., to September term, 1869.

JOHN J. TOWNSEND, EX'R, &C., *vs.* EDWARD CHAPPELL, SR., ET ALS. } In equity.

And the said complainant, by A. L. Cummings, his solicitor, comes & excepts to the ruling of the court in overruling his motion to suppress testimony, which motion was filed August 3d, 1869, in said cause, in said court.

And the said complainant, by his solicitor aforesaid, comes & excepts to the finding of the court, October 18th, 1869, in said cause, & also to the decree founded on said finding, & moves the court that they be set aside and a rehearing granted in said cause, for reasons stated in the petition filed herewith, hereby referred to & made a part of this motion. Said complainant prays that this motion, with said petition & the foregoing exceptions, be herewith filed as a part of the record in said cause.

A. L. CUMMINGS,
Sol'r for said Complainant.

Petition & motion for rehearing denied.

NOVEMBER 8, 1869.—This day came the complainant by his counsel, and presented to the court his petition and motion, as herein filed, for a rehearing of this cause, and, being submitted, it is ordered by the court that the said petition and motion be, and hereby are, denied.

Appeal.

And also came said complainant by his said counsel, and prayed an appeal to the Supreme Court of the United States.

Whereupon it is ordered by the court that an appeal so prayed for be allowed, and that said complainant enter into a bond, with surety,

164 to be approved by the judge, in the penalty of five hundred dollars, conditioned to pay the costs of said appeal.

plainant, and ask that it be directed and decreed by the court to be indorsed as payment in full to the date aforesaid.

Arthur Broson died, seized of a very large landed estate in the southwestern part of this State. Letters testamentary were issued to Frederic Bronson by the surrogate of the city of New York, the domicil of the testator and executor. Frederic Bronson, as exec'r, employed as his agent William C. Bostwick, a lawyer and banker and county judge, a man extensively and favorably known a distance around Galena, his place of residence and business, to make contracts for the sale of lands of said testator in that vicinity, to receive the purchase-money, and to transmit the same to Frederic Bronson, and to pay taxes on said lands. Bostwick had been so employed by Frederic Bronson for twelve or fifteen years before the sale to these defendants. The usual manner of concluding sales was for Bostwick to receive proposals of purchase and forward them to Mr. Bronson for his approval; and, if approved, he made out a contract of sale, which he forwarded to Bostwick for delivery to the purchaser upon complying with its conditions.

One of the conditions of these contracts was that both principal and interest of the purchase-money should be paid to Bronson in the city of New York. In the month of January, 1860, Bronson annexed to said contracts:

"William C. Bostwick, of Galena, Illinois, is authorized to
168 receive and receipt for the first payment on this contract; all subsequent payments to be made to Frederic Bronson, in the city of New York."

Upon Bostwick expressing dissatisfaction with this addition to the contracts, Bronson wrote to him under date of Feb. 15, 1860:

"The memorandum at the foot of form of contract I have recently put in all my land contracts to repel the construction lately sought to be put on them that the first or other payments, if received by the agent, is an implied waiver of the claim for exchange and of the stipulation in the body of the contract that the money is to be paid to me in the city of New York."

Defendants preferred a deed of the land on their giving a bond and mortgage to secure the unpaid purchase-money. A deed was prepared and delivered to them on the 13th Feb., 1865, and a bond and mortgage were delivered to Bostwick for complainant same day. The consideration of the deed was $6,843 60; $1,500 being paid, the bond and mortgage were made to secure $5,343 60, maturing as mentioned in the bill, with interest, and payable to Frederic Bronson, in the city of New York. Chappels objected to signing the bond and mortgage on account of the provision of payment in New York. Bostwick (through whom the papers passed) assured them "that he was Bronson's agent, but that he was equally bound to do them justice, and that the provision in the bond with regard to the place of payment meant nothing more than exchange on New York; in other words, payments were to be made with sufficient added to purchase exchange." In this respect this declaration of Bostwick was in reiteration of and in compliance with Bronson's letter to him; Bostwick was pursuing Bronson's instructions in this respect when the securities were given. And also by receipt of payments of instalments, and from the evidence, such seems to be the habit of business between the principal and his agent. Bronson had a right to favor debtors by waiving the stipulated place of payment, either directly, or indirectly, by the usual course of business between himself & his agents.

169 The securities were returned to Bronson in New York in the summer of 1865, without the knowledge of defendants.

In November 1865 Bostwick wrote to defendants, requesting payment of the first installment. Frank Bostwick, his son and confidential clerk, on the 4th Dec'r, 1865, signed a receipt for $825 36 then paid, the amount of said installment, including interest & exchange on New York. This money was paid in the office of William C. Bostwick, in Galena. The next installment was paid by defendants Feb'y 28, 1866, to Bostwick, at Galena, and receipted for by W'm C. Bostwick, per F. Bostwick, $980, including full interest and exchange. Bostwick failed financially in December 1866, and left Galena. About the 18th February, 1867, defendants enclosed to Frederic Bronson, at New York, $927 13, being for installment with full interest due February 13, 1867, for which Bronson returned an acknowledgment by letter, and stated that he had applied it as payment on the bond & mortgage. In the letter enclosing this payment defendants stated that the sum enclosed was in full for installments due to that date. There are no credits for payments indorsed on the bond & mortgage.

February 8th, 1868, defendants enclosed in a letter to Mr. Bronson a draft for $878 89, the amount of installment, with full interest, to become due the 13th of same month, which draft complainant returned to them by letter, stating that he cannot accept the draft as the amount due on the 13th Feb'y, 1868, as he claims a much larger amount past due, and he returned the draft.

In the month of February 1867, after being notified by defendants of the failure of Bostwick, Mr. Bronson wrote to them repudiating the alleged authority of Bostwick to receive the payments as agent, stating that he was only authorized to receive the first payment, and enclosing an involuntary affidavit of Bostwick, taken before a Mr. Calhoun, Mr. Bronson's clerk, to the same purport.

170 Defendants remitted to Bronson the February 1867 payment, including the interest on the whole debt remaining unpaid. The appropriation of this money by Mr. Bronson is objected to by defendants, and is a point for decision.

Defendants rely upon the depositions of William C. Bostwick and of his son and confidential clerk, Frank Bostwick, to establish the fact that the agency of W'm C. Bostwick extended to receiving the payments, in addition to the facts above stated in this opinion, and the notorious reputation of the course of Bostwick's proceedings in his agency in selling Bronson's lands, and receiving the purchase-money with Bronson's knowledge; also to a number of letters written by Mr. Bronson and his private secretary to Mr. Bostwick, running through a series of years, upon the subject of Bostwick's receiving purchase-money from several individuals.

In opposition to all this evidence, we have the deposition of Mr. Bronson and of his private secretary, Calhoun, that Bostwick was only empowered to receive the first payment on the contracts. Mr. Bronson and Mr. Calhoun evidently testified from the draft of the contracts, with the appended notice of Bronson, above mentioned. Mr. Bronson did not refer to or call to remembrance the number of letters to Bostwick upon the subject of collecting and transmitting proceeds of sale made through Bostwick as his agent.

The loss of the amount of the payments of November 1865, and of February 1866, must be borne by some person, in consequence of the failure of Bostwick to pay the money over to Bronson. Upon a careful review of the evidence, I have concluded that to visit this loss upon the

defendants would be inequitable and unjust. Defendants, through the letter of Bronson to Bostwick and its explanation by Bostwick to them, at the execution of the bond & mortgage, that the clause requiring payment in New York was merely inserted to secure exchange, at the expense of the obligors, and which they have literally complied
171 with in making payments to Bostwick, had a right to rely upon Bostwick's authority to receive their money.

As to the appropriation by Mr. Bronson of the payment of February 1867 to the interest on the whole debt, including the installments paid to Bostwick, and not to the installment then matured, he committed a mistake. He acted, in this respect, upon the condition of his land contracts, which requires interest to be paid annually on the whole debt remaining unpaid. The condition of the bond of defendants is for the payment of $5,343 60 in installments at specified periods, "and the interest thereon on the above several sums of money to be computed from the day of the date hereof at and after the rate of seven per cent. per annum, and to be paid in the city of New York at the dates above specified for said payments." Now, it is evident that the payment of February 1867 was in full of debt then due, and all the interest on the whole debt, and it should have been so applied. Defendants, in their payments of November 1865 and February 1866, and in the payment of 1867, included the interest on the whole sum, but the bond did not call for more than the accrued interest on each installment.

The effort of defendants to pay the installment of February 1868, with interest, is to be next considered. They remitted to Mr. Bronson, in New York, a draft for the full debt and interest, which was returned to them for the alleged reason that the money should not be received in payment of the installment of February 1868, as prior installments remained unpaid. The answer alleges that on the 8th day of February, 1868, defendants remitted to complainant, by draft, $878 89, being the whole amount of principal and interest then due, which complainant returned, refusing to credit the same on the alleged ground solely that there was a larger sum due. And defendants now here bring said sum into court, and tender the same to complainant, and ask that it
172 be directed by the court to be endorsed as payment in full up to February 13, 1868.

Here was a tender of the amount then due and payable, and a refusal to accept on the sole ground that a larger sum was then remaining unpaid. The amount of the draft has not been paid into court, nor have defendants shown that the money has been kept in readiness to be delivered whenever called for. The money having been retained by defendants from the return of the draft, the law presumes that they have made interest on it. The tender and refusal were not a discharge of the lien of the mortgage for that amount. To make the tender effectual against interest & costs, the money should have been paid in court.

A decree will have to be rendered for the amount of the installment maturing February 13th, 1868, $651 77, with interest from February 13th, 1867, and costs.

173 UNITED STATES OF AMERICA,
District of Wisconsin, ss:

I, Edward Kurtz, clerk of the circuit court of the United States of America for the district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals, and are correct transcripts therefrom now on file and remaining of record in my office, being a full and com-

plete copy of the record and proceedings in the case of John J. Townsend, ex'r, &c., vs. Edward Chappell, senior, et al.

In testimony whereof I have hereunto set my hand, and duly affixed the seal of the said court, at the city of Milwaukee, in said district of Wisconsin, this eleventh day of March, in the year of our Lord one thousand eight hundred and seventy, and of the independence of the said United States the ninety-fifth.

[SEAL.] EDWARD KURTZ, *Clerk.*

174 The United States of America to Edward Chappell, senior, Edward Chappell, junior, and John N. Chappell, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to an appeal in the circuit court of the United States of America for the district of Wisconsin, wherein John J. Townsend, executor of Frederic Bronson, deceased, who was executor of Arthur Bronson, deceased, is appellant, and you are appellees, to show cause, if any there be, why the decree passed against the said John J. Townsend, executor of Frederic Bronson, deceased, who was executor of Arthur Bronson, deceased, should not be reversed, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this twentieth day of November, in the year of our Lord one thousand eight hundred and sixty-nine, and of our independence the ninety-fourth.

A. G. MILLER,
District Judge.

I accept service of above citation this 27th day of November, A. D. 1869.

M. M. COTHREN,
Solicitor for the said Chappels, Appellees.

(Indorsement on cover:) No. 433. John J. Townsend, executor of Frederick Bronson, deceased, who was executor of Arthur Bronson, deceased, appellant, vs. Edward Chappell, senior, Edward Chappell, jr., and John N. Chappell. Wisconsin C. C. U. S.

Filed 16th March, 1870.

Supreme Court,

OF THE UNITED STATES.

JOHN J. TOWNSEND, Executor of FREDERIC BRONSON, deceased, who was Executor of ARTHUR BRONSON, deceased,

Appellant.

vs.

EDWARD CHAPPELL, Senior, EDWARD CHAPPELL, Junior, and JOHN N. CHAPPELL,

Respondents.

APPEAL

From the Circuit Court of the United States, for the District of Wisconsin.

APPELLANT'S BRIEF.

JOHN J. TOWNSEND,

Appellant in person.

New York:

A. W. KING, PRINTER, 73 & 75 FULTON STREET.

1871.

Supreme Court

OF THE UNITED STATES.

JOHN J. TOWNSEND, Executor of FREDERIC BRONSON, deceased, who was Executor of ARTHUR BRONSON, deceased, *Appellant*, *vs.* EDWARD CHAPPELL, Senior, EDWARD CHAPPELL, Junior, and JOHN N. CHAPPELL.	1870. *December Term.* *No.* 203. *Appellant's Brief.*

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WISCONSIN.

STATEMENT.

1868.—18th Feb.—FREDERIC BRONSON, Executor, as aforesaid, filed a bill for the foreclosure of a mortgage.

The bond and mortgage are dated 13th Feb., 1865, and are set forth as Exhibits A and B to the bill of complaint.

Fol. 6–13.

The whole amount of principal,..... .....$5343 60.

Payable as follows:

1865.	Nov.	30.	With interest from	Feb. 13, 1865,	$781 20
1866.	Feb.	13.	"	"	651 77
1867.	"	"	"	"	651 77
1868.	"	"	"	"	651 77
1869.	"	"	"	"	651 77
1870.	"	"	"	"	651 77
1871.	"	"	"	"	651 77
1872.	"	"	"	"	651 77

To be paid in the City of New York at the dates above specified for said payments.

Fol. 2.

It is averred that there was due as follows:

1865.	Nov.	30,.....	$1077 31
1866.	Feb.	13,.....	918 29
1867.	"	"	925 31

That the payments were as follows:

1867.—Feb.	23.—Cash, ...		927 13

Credited as follows—viz:

In payment of Interest to Feb. 23, 1867.
" " Principal..... 151 04

The mortgage contained a special interest clause of thirty days.

Fol. 3, 7, 13.

The complainant asked for a decree for the whole principal (after crediting said payment of $927.13) with interest from 23d Feb., 1867.

The defendant's answer admits that there became due,

1865.	Nov.	30,.....	$875 36
1866.	Feb.	13,.....	978 45

Fol. 16.

1867.—Feb. 13,..... $925 51

and denies that these sums were wholly unpaid.

The defendants allege the following payments:

1865.—Dec. 4,..... 875 36

which sum they allege was received and receipted for by Wm. C. Bostwick, the agent of this complainant.

Fol. 17.

1866.—Feb. 28,..... $980 00

which they allege was received and receipted for by Wm. C. Bostwick, complainant's agent.

Fol. 17.

1867.—Feb. 18, ... $927 13

which they allege was paid to complainant by draft, and acknowledged by letter, and that this was all that was then due.

1868.—Feb. 8,..... $878 89

which they allege was remitted to complainant by draft as the whole amount then due, and returned by mail with a refusal to credit the same, on the alleged ground that there was a larger sum due.

Fol. 17.

This last mentioned sum, the defendants ask, be decreed to be endorsed as payment in full to Feb. 8, 1868.

1868.—April 30.—Replication filed.

Fol. 18.

1868. Nov. 1. Complainant departed this life.

1869. Mar. 1. The suit was revived in the name of the present complainant.

Fol. 20–26.

1869.—Aug. 3.—Complainant moved to suppress certain testimony.

Fol. 26 to 28.

To wit: portion of the deposition of Wm. C Bostwick, p. 84; of Edward Chappell, in answer to 4th, 6th, and 7th and 8th interrogatories, pp. 35–42; of Edward Chappell, Jr. p. 43, of Frank Bostwick p. 47; and also letters of Mr. Bronson offered under stipulation, p. 50.

This motion was overruled Oct. 6, 1869.

Fol. 154, p. 97. Exception, p. 103.

1869.—Sept. 25–27.—The cause was heard upon pleadings and proofs.

Fol. 31.

Oct. 18.—Ordered as the finding of the Court, that the portions of the debt secured by the bond and mortgage, maturing Nov. 30, 1865, Feb. 13, 1866, and Feb. 13, 1867, including the entire interest on the whole debt, was paid by defendants to complainant or his agent within thirty days after they respectively matured.

That complainants should have a decree for $651 70, being that portion maturing Feb. 13, 186⁷, with interest from Feb. 13, 1867, and a reference to compute.

Fol. 155.

Oct. 18.—Master's Report according to the finding of the Court.

The only payment now due and unpaid is that due

Feb. 13, 1868,.....	$651 77
Int. from Feb. 13, 1867 to Oct. 18, 1869,..	122 28
Exchange on N. Y. ¼ per cent. on $774,..	1 93
	$775 98

Amount to become due: The future instalments, with interest, from Feb. 13, 1867, until paid, making in all $2607 08

Fol. 157.

Oct. 18.—Decree, confirming Master's Report, with directions for a sale to pay the costs of the complainant, and the aforesaid sum of $775 98 and interest from this

date, with leave to the complainant to apply for a further decree in case of the non-payment of future installments

Fol. 158 to 160.

Nov. 6.—Exceptions by complainant to the finding of the Court and to the decree, and motion for a re-hearing, which was denied Nov. 8, 1869.

Fol. 163.

The defendants claim that the payment referred to in the following receipts should be credited to them.

Received, Galena, Dec. 4, 1865, of Edward Chappell, Sr., $825 36 on account of second payment and interest due Nov. 30, 1865, of Bronson farm.

WM. C. BOSTWICK,
Pr. F.

Fol. 58.

Received, Galena, Feb. 28, 1866, of Edward Chappell, Jr., nine hundred and eighty dollars, being for the second payment on land bought of Frederic Bronson at Elk Grove, Wis.

WM. C. BOSTWICK,
Pr. F. BOSTWICK.

Fol. 58.

The question is, whether William C. Bostwick was in such relation to the complainant that these payments to William C. Bostwick at Galena, Wisconsin, satisfied defendants' obligation to pay to the complainant at the City of New York.

The complainant, a resident of the City of New York, in February, A. D. 1865, held as Executor of the estate of Arthur Bronson, the mortgaged premises.

The defendants called upon William C. Bostwick, a lawyer at Galena, doing a general collecting business and a banker's business, (fol. 134.) and opened negotiations with him for the purchase of the land.

He communicated to them the seller's price.

The defendants resided at Elk Grove, Lafayette County Wisconsin, about twenty miles from Galena. The mortgaged premises are at Elk Grove.

The defendants offered to purchase the land at $30 per acre, payable one third in cash, the residue in seven annual instalments, with interest.

Fol. 53.

The complainant accepted this offer, and forwarded to Bostwick a contract in duplicate, partly written and partly printed, for execution by the defendants, providing for the payment of the instalments to the complainant in New York, with this memorandum at the foot.

William C. Bostwick, Esq., of Galena, is authorized to receive and receipt for the first payment on this contract, all subsequent payments to be made to F. Bronson in the City of New York. New York, Feb'y 13th, 1865.

F. BRONSON,

Executor.

Fol. 33.

At the outset a question arose whether the complainant would consent to give a deed and accept a mortgage for deferred payments.

Fol. 54.

This question Bostwick did not assume to determine, and informed defendants that he would write to complainant and make the enquiry.

Fol. 54.

He wrote on 24th February, 1865. Mr. Bronson, replied March 3d, 1865, Letter No. 1, p. 52, and Bostwick communicated with defendants March 9th, 1865, (See Ex. A. p. 45.)

On 14th March, 1865, Bostwick wrote to defendants that complainant would give a deed, and accept a mortgage. (Exhibit B. fol. 71.

Upon the receipt of this letter defendants went to see Mr. Bostwick, and it was agreed that defendants should receive a deed, with verbal permission to take possession of the farm, (which permission, it does not appear, was acted upon,) and that the deferred payments were to be secured by a mortgage, and, "as we supposed, notes," the defendant Chappell adds.

Page 36, fol. 55.

The statement of this supposition is here adverted to for the purpose of observing that nothing is shown to warrant it.

Mr. Bostwick named the day for the defendants to call and get the deed, and told them to take possession of the farm in the meantime.

They called on the 25th March, 1865; the deed had not arrived. They paid $1,500, and received the following acknowledgment:—

		3)6843 60
		2281 20
Cash	$1,500 00	
Nov. 30, '65	781 20	2281 20
		$4562 40
Feb. 13, '66	651 77	
'67	651 77	
'68	651 77	
'69	651 77	
'70	651 77	
'71	651 77	
'72	651 77	$4562 40

Interest at 7 per cent. per annum on deferred payments from 13th Feb., 1865.

Received, March 25th, 1865, of Edward Chappell, Sen., Fifteen Hundred Dollars, being for cash payment on purchase of south west quarter, and south half of south-east quarter of section 33, town 3, range one east in Lafayette County, Wisconsin; excepting that portion heretofore conveyed to Stephen Webster and Joseph Thomas, comprising eleven $\frac{88}{100}$ acres and leaving 228.12 acres purchased by said Chappell as aforesaid, and the terms of payment to be as specified above.

FREDERIC BRONSON,
Executor,
Pr. WM. C. BOSTWICK,
Att'y.

Page 37, fol. 56.

1865, May 10. The defendants received a letter from Mr. Bostwick by post advising them that the deed had arrived and requesting them to call and execute the mortgage.

Fol. 56.

Here should be noticed the recurrence of the particulars already noted in the defendants' narrative.

Mr. Chappell, senior, represents that up to this time it had been understood "by and between all parties, that we were to give our promissory notes for the balance of the purchase money not paid down, which notes were to be secured by a mortgage on the farm" (fol. 57.) He alleges that he was surpised to find that it was a bond which they were required to execute.

He interposed at first an objection urging that notes they could "lift" as they became due. This objection was answered by Mr. Bostwick with a remark to the effect that there would be no difference, as payments would be entered on the bond as soon as they were made, that he (Bostwick) never had any trouble with any person in sell-

ing lands for Mr. Bronson; that Mr. Bronson was a fair-dealing man; that everything would come out all right.

The witness adds that upon such representations and others to a similar effect from Mr. Bostwick, acting as the agent from Mr. Bronson, "we reluctantly executed the bond and mortgage and received our deed to the farm."

Page 37, fol. 57.

The foregoing incident is referred to, to illustrate the tone of the defence.

Whatever conception the defendants may have had anterior to the time of their accepting the deed that their deferred payments were to be represented by notes rather than a bond, nothing whatever is shown which could have induced it.

The only imaginable ground for a preference to sign notes rather than a bond is the very trifling one suggested, that evidence of payments "by lifting the notes" was more satisfactory to them than any other.

This simple objection was removed by the remark, that Mr. Bronson was a fair-dealing man, and that payments would be entered on the bond as soon as made.

That the witness should be prompted to add, "that from all these and similar representations from Mr. Bostwick, acting as the agent of Mr. Bronson, we reluctantly executed the bond and mortgage," shows an evident desire to magnify the effect of an indifferent circumstance into something which might effect the determination of the issue in his favor.

The thought of coloring the transaction as an involuntary one on the part of the defendants, was also present,

whereas, in fact, it was at their request and for their convenience that Mr. Bronson was induced to depart from his uniform practice of making a contract, and in lieu of a contract, delivering a deed, and receiving a bond and mortgage.

Critically considered, if the incident has any bearing upon the issue, it indicates rather the distinct understanding of the defendants, that they were to deal with Mr. Bronson directly—at a distance from them—for in this view alone is their any point in the expression of a preference to pay a note rather than incur the risk of a payment not being receipted for, or indorsed upon the bond.

Another incident follows:

The defendant, Edward Chappell, senior, states that the terms of the bond were called to his attention; that the payments were to be made to the complainant in the city of New York.

According to common experience, upon consideration of this particular provision of the instrument, the first thought would be, not the apprehension of loss from an attempted but ineffectual performance of the obligation, but the greater cost of purchasing a draft on New York than of paying each instalment at Galena. The suggestion that the idea of the authority of William C. Bostwick to receive future payments was then made a topic of representation, and that quieting assurances upon that score were then made by him is, from the nature of the transaction then being consummated, in the highest degree improbable.

The statement is, that Mr. Bostwick said, "I am Mr. Bronson's agent, but I am equally bound to do you jus-

tice;" and that the provision in the bond, with regard to payments being made in New York, meant nothing more than "exchange on New York."

"In other words," the defendant adds, "we were to make our payments together, with sufficient to purchase exchange on New York."

Fol. 57, p. 38.

It is respectfully submitted that the impression on the mind of Edward Chappell, senior—if accurately expressed by his language—is evidently an unreal one, made by the contemplation of subsequent events.

The notion of possible injustice from any quarter, or of the obligation of William C. Bostwick to do justice, notwithstanding any relation he might have to the complainant, could not then have been present.

The point in view was the cost of exchange on New York, and not the agency of William C. Bostwick; and this is confirmed by the defendant when he gives his version of the communication; in other words, "we were to make our payments together, with sufficient to purchase exchange on New York."

Upon referring to the repetition given by him of the same conversation, the same features are reproduced, with the addition of the remark ascribed to William C. Bostwick, "If you doubt my agency, I refer you to Governor Dewey."

Fol. 65, p. 42.

The defendant proceeds:

"We did not doubt his agency, and executed the papers."

"The reasons why we did not doubt his agency, he "states, were, we had seen hand-bills and advertisements in "the public newspapers, stating that he was the agent of "the Bronson lands."

"Several of our neighbors had purchased lands of Bron-"son through him, as Mr. Bronson's agent; it was generally

"understood that he was Mr. Bronson's agent; we knew "that our neighbors had paid Mr. Bostwick instalments as "they became due upon their purchases of the Bronson "lands, and taken William C. Bostwick's receipt therefor, "as agent of Mr. Bronson; and it was notorious all through "that section of country, both in Wisconsin and Illinois, "that William C. Bostwick was Mr. Bronson's acting agent "for the Bronson lands."

This statement of the defendant serves to illustrate his desire to group together the alleged *indicia* of Mr. Bostwick's agency to receive deferred payments; and it leads him, as before noticed, to state the impression on his mind, that, at the time of the closing this transaction, the agency of Bostwick was in question.

All the matters which he enumerates, if they had, in fact, been brought to his notice before he made the purchase—and if he had, in fact, already made the inference from them, that Mr. Bostwick was Mr. Bronson's agent for any or for all purposes—would not have been considered *then* for the sake of determining whether he should act, or should not act, on the faith of Mr. Bostwick's agency.

The deed and mortgage were, in Mr. Bostwick's hands, tangible evidence of his authority for exchanging them.

If any doubt had arisen, and was to be allayed, it should have been on 25th March, 1865, several weeks earlier, when $1,500 was paid to Bostwick.

Page 37.

Then it would have been reasonable that Bostwick should have said, "If you doubt my agency, I refer you to Governor Dewey."

But, then, it will be observed, the raising and settling of the doubt would have no effect upon the determination of the issue in this case, because the bond and mortgage, requiring payment to the complainant in New York, had not been received.

And the inquiry would have been limited to Bostwick's undisputed authority to receive and transmit communications for the purchase and sale of the land.

The complainant claims that the general expressions used by the defendant in his deposition, and the inferences there stated by him, should not be quoted in determining the question at issue.

In all the period referred to by the senior defendant, there is no probability that the right of William C. Bostwick to receive deferred payments was made a topic of question or discussion.

What was said at the time of the reading of the papers would naturally have been nothing more than as to the effect of the payment in New York; that it would cost more in exchange than if made at Galena.

Due protection cannot be afforded to the complainant, unless the statements are considered in the light afforded by a contemplation of all the motives to action, which, according to common experience, probably influenced the parties concerned at each point of time in the course of the transaction which is detailed.

The defendants may have had, at all times, defined or undefined notions with respect to the authority of Bostwick; but it cannot be disputed that it could not have been until after his failure that the question arose whether he could not be regarded as the complainant's agent for the receipt and remittance of deferred payments.

Until then, it was a matter of slight importance to the defendants what authority he had received from the complainant.

The extent of that authority would not be to them a subject of inquiry, still less of anxious enquiry; for, while his credit was good, their risk in remitting through him, as their own agent or banker, was so small as to be inappreciable.

The testimony of the defendant, Edward Chappell, Junior, contains nothing which can be considered in determining the effect of the disputed payments to William C. Bostwick.

Page 43, fol. 67-68.

He states his inference that Bostwick was the complainant's agent, and repeats the statement in many forms, as follows:

"We negotiated with him in the purchase of the land, as the agent of the complainant."

"The reasons for my knowing him to be the agent of the complainant were, I knew of several of our neighbors who had purchased lands of Mr. Bronson through him as agent; of their making payments to him as agent as the payments became due; of his giving receipts for said payments as such agent; of neighbors paying rent to said Bostwick as the agent of said Bronson, for lands held by them from Mr. Bronson; from having made enquiries; it being notorious through the neighborhood that he was the acting agent of Mr. Bronson in the sale of lands, and in receiving payment on sales made."

This defendant went with the senior defendant, and made the contract, and executed the bond and mortgage, and paid the first $1,500 on the purchase in the manner stated in the senior defendant's deposition.

These inferential and general statements in the deposition of both defendants were excepted to.

Page 17.

They cannot affect the rights of the complainant.

The authority of Bostwick to receive and communicate offers for the land was clear. All the statements are in reply to an interrogatory limited to the negotiation and consummation of the purchase.

Fol. 66, page 43.

They do not in terms refer to the authority to receive future payments.

The particular transactions in which the defendant states he had heard or knew that Bostwick had acted as agent, are none of them defined, and no general statement of them, or reference to them, is to be regarded—those given in detail can only be considered.

The complainant's rights cannot be affected by this testimony without a violation of the plainest and most familiar rules of evidence.

THE NATURE AND EXTENT OF THE AUTHORITY OF WILLIAM C. BOSTWICK:

It was limited to receiving offers for the purchase of lands, and communicating them to the complainant who, if they were accepted, forwarded his contract to William C. Bostwick for delivery, authorizing him to receive the first payment from the purchaser.

Each contract contained an express stipulation that the future payments were to be made to the complainant in the city of New York.

A similar provision was inserted in the bond and mortgage in this case.

The importance of this precaution to the complainant is measured by the extent and number of obligations which he held.

It was perfectly just and fair to the individual debtor and not onerous to him.

The complainant states that he is executor of Arthur Bronson, deceased, and proceeds in substance as follows:

Fol. 32, p. 21.

William C. Bostwick, late of Galena, had no authority, written or verbal, to act as my agent individually or as the agent of myself, as executor of Arthur Bronson, or to represent the estate of Arthur Bronson in any capacity (except as hereinafter stated) at any time, especially from the 1st of January, 1860, to this date, as to the sale of any lands in Illinois or Wisconsin, or elsewhere, or to make contracts therefor in my name, he was authorized only to receive and to communicate offers for the purchase of lands, and to communicate the same to me, and as far as relates to the lands described in the mortgage, and sought to be foreclosed in this suit, he sent to me the offer of the defendants to purchase the same, which I accepted, and sent to him a contract, in duplicate, executed by me, and authorized the said Bostwick, on the receipt of the cash payment and of the counterpart executed by said defendants, to deliver the said contract, and I gave an express written authority to receive the first or cash payment, and to exchange the contracts, but in that written authority I expressly stated that all subsequent payments were to be made to me in the city of New York, which written authority, appended to the said contract, was in words and figures following:

"William C. Bostwick, Esq., of Galena, is authorized to "receive and receipt for the first payment on this contract, "all subsequent payments to be made to F. Bronson, in the "city of New York."

NEW YORK, February 13th, 1865.

F. BRONSON, Ex.

A blank form of the contract is annexed to this deposition marked A, fol. 37. The defendants ex-

pressed a preference to receive a deed for the lands described in the mortgage sought to be foreclosed in this suit, and to execute then a bond and mortgage on the premises to which I assented and authorized the said Bostwick to receive the cash payment and to remit the same with the bond and mortgage, to me. *The said Bostwick remitted the cash payment and the bond and mortgage in this suit to me by his letter of the 12th day of September, 1865, and they have remained in my possession from that date to the present time, and have never been out of my office in the city of New York;* and the said Bostwick was never authorized by verbal or written power to receive the money due on the first or second payments that fell due, or any other payments stipulated for in said bond; and no one except myself and Elias L. Smith of this city, was authorized to receive the money on said bond and mortgage. The said Bostwick had no authority to collect or receipt in my name, or otherwise for me, or for the estate of Arthur Bronson, deceased, the money due from said defendants on their said bond and mortgage now in suit in this court.

The only hand bill I have ever seen is a printed list of lands dated 27th February, 1860, which I have not in my possession. It contained a long list of lands, including lands that did not belong to me or to the estate of A. Bronson, and did not contain the lands described in the mortgage in suit, which lands belonged to the estate of Arthur Bronson, and the title was in me as said executor; that in the said printed list the said Wm. C. Bostwick did not assume to act as my agent, or as the agent of myself as executor of Arthur Bronson, nor was it signed by said Wm. C. Bostwick as agent.

Wm. C. Bostwick was employed by me as counsel to foreclose a mortgage executed by Thomas C. Legate to Arthur Bronson, executor, dated June 30th, 1841, and that was the only case in which the said Bostwick was employed as counsel for the executor of Arthur Bronson.

On the 22d day of December, 1866, the complainant addressed to the defendants the following letter:

No. 50 Wall Street,
NEW YORK, Dec. 22d, 1866.

Messrs. EDWARD CHAPPELL, Sr. & Jr, and JOHN CHAPPELL, Elk Grove, Lafayette Co., Wis.

GENTLEMEN:—There became due and payable on 30th Nov., 1865, on your bond and mortgage to me, for $5,343.60

An instalment of, ...	$781.20
With int. from Feb. 13th, 1865, 9 m's 17 days,	43.60
Also due Feb. 13th, 1866, an instalment of...	651.77
And twelve months' interest on $4,562.40,...	319.37
All which remain unpaid,.....	1,795.94

I have, therefore, to request that you will cause to be paid to me in this city, without delay, said amount of $1,795.94, with interest added thereto, until such payment is received by me, viz: interest from Nov. 30, 1865, on $824.80, and from February 13th, 1865, on $971.14, to the date that your remittance will reach me.

Respectfully yours,
FREDERIC BRONSON, *Executor*,
No. 50 Wall Street, New York.

P. 91.

The following correspondence ensued:

Elk Grove, Jan'y 7th, 1867.

FREDERIC BRONSON, Esq., New York:

Dear Sir: Yours of the 22d Dec. was duly received. We are surprised to hear that you have not received the instalments you complain of in your letter. We have paid them as they became due, for which we hold Mr. Bostwick's receipts for both principal and interest. We will also be prepared to meet the next payment when due. Will you please inform us who is your present agent, as we learn Mr. Bostwick has left Galena?

Yours truly,
EDWARD CHAPPELL, Jr.
P. 91.

New York, Jan'y, 12, 1867.

EDWARD CHAPPELL, Jr. Elk Grove:

Dear Sir: I am much surprised and sorry to hear that you have paid monies due to me on your bond and mortgage to Mr. Bostwick, who was never authorized by me either to receive the payment, or to give receipts therefor, in my name. By referring to your bond you will perceive that the condition of the bond is that the money should be paid to me in this city. I have no agent, and never had any agent, authorized to receive money for me in Galena, except as it related to the first payment on contracts. As to those, I made an especial exception in writing, that they might be received by the party through whom the sales were made and the contracts exchanged, but all other and future payments were to be made to me personally, in the City of New York. Mr. Bostwick was never authorized to sell my lands, nor collect the payments, other than the cash payment. If parties in Wisconsin elected to employ him to remit monies to me on account of their contract, he acted as their agent and not as mine, and if there should be any loss through his default, it should be theirs and not mine. I have neither seen nor received any communication from Mr. Bostwick for many months, except a short note within the last month, and do not know anything about his private business and embarrassments. The proper mode for you to remit to me funds is by a good bank draft on a good bank in this city, payable to my order. I have some land adjoining the tract you purchased. Will you favor me with your opinion of its value on the usual terms of credit: ¼ cash, and residue in four equal annual payments; interest at 7 per cent.?

Yours truly,

F. BRONSON, *Executor.*

P. 92.

Elk Grove, Jan'y 19th, 1867.

FREDERIC BRONSON, Esq., New York ;

Dear Sir: Yours of the 11th inst. is received and we still claim that Mr. Wm. C. Bostwick was your authorized agent, and in proof of the fact we inclose you the affidavit of Mr. Frank Bostwick. You referred us to the bond, where it says that the money was to be paid to you in New York. We claim that had reference to paying the exchange on the monies from Galena to New York, and Mr. Wm. C. Bostwick informed us that that was what you had reference to at the time we signed the bond.

Yours truly,

EDWARD CHAPPELL, Jr.

P. 94.

New York, January 31, 1867.

EDWARD CHAPPELL, Jr., Esq., Elk Grove, Wis.:

Dear Sir: I received this morning your letter of the 19th inst. I am sorry to see by your letter that you think I would be induced to misrepresent to you the relation that existed between me and Mr. Wm. C. Bostwick, as your letter and the enclosed affidavit of F. Bostwick implies. If either Mr. Wm. C. Bostwick or his son told you that he held a power of attorney from me, either to sell lands or to collect the monies due on contracts or bonds, and to receipt for the same in my name, they told you what was not true. Mr. Bostwick never had any general power of attorney from me, never had authority to sell any of my lands, never had authority to receive any money for me, except the first payment on contracts, and in those cases I wrote at the foot of the contract special authority to receive the cash payment, but that all other payments were to be made to me in the City of New York, thus giving a limited and special power only for the first payment on each contract. I cannot be held liable for what Mr. Bostwick's son shall choose to swear

to, and his affidavit cannot establish a power. It is quite notorious to everybody that Mr. Bostwick received proposals to purchase my lands, and transmitted them to me, and such proposals were accepted or rejected by me. I never authorized him to sell any lands in my name, and know of no instance where he has done so. All contracts were made by me personally. You ought before paying him money, to have asked him to show you his power to receive it, and his inability to do so would have shown you, that, if you entrusted him with the money, he acted as your agent, and not as mine. You were very careful before you paid any money to require my individual contract to sell, and my deed showing you were not willing to rely on him for that purpose. If you had shown the same prudence and course in paying the instalments due on your bond, this loss would not have happened. It must be manifest to you that an authority to act as an agent cannot be established by the assertion of the party, and my correspondence with him will show that he never had any such power. You will doubtless recollect that, when you first proposed to buy the land at Elk Grove, I forwarded a contract for sale, and that contract expressly stated in writing at foot that the first payment might be made to Mr. Bostwick, but that all other payments were to be made to me, which was notice to you how far he was authorized to receive money for me, to wit: the first payment only, and all other payments to be made to me, in this city, and not to him.

You afterwards proposed to have a deed, and to execute a bond and mortgage. I sent them to Mr. Bostwick, with directions to deliver the deed on receiving your bond and mortgage; and those papers expressly stipulated that you should pay to me in this city. I am very sorry that Mr. Bostwick should have betrayed your confidence, but as he acted as your agent, and not as mine, the loss should be yours, and not mine. In this matter I acted as executor, and, as such executor, the debt is owing to the legatees, who will not recognize any payment not paid to the ex-

ecutors. I should like to know what may be your decision in the matter, as a matter of this sort ought not to be left open. I will thank you for an answer by the returning mail.

Truly yours,

F. BRONSON,

Executor of A. B.

P. S.—I beg to call your attention to the fact that more than thirty days' default has occurred on your bond and mortgage, and that, by the terms of the bond, the whole amount of the bond is now due.

F. BRONSON, EXECUTOR.

P.p. 92, 93.

Elk Grove, February 6, 1867.

MR. FREDERIC BRONSON, Esq., New York.

DEAR SIR: The third instalment will be due in a few days, and we are prepared to meet it. But we find that we will not be safe in remitting money to you in New York, as we do not know the names of any banks in that city, but would prefer that you should appoint some agent in this neighborhood, so that we could have a receipt for the money when paid. We will also, as in the former instalments, pay the exchange to you in New York city.

Very respectfully yours,

EDWARD CHAPPELL, JR.

P. 94.

New York, Feb. 11, '67.

EDWARD CHAPPELL, Esq., Elk Grove, Wis.

DEAR SIR: The terms of your bond require you to pay the instalments of principal and interest in this city. I have no agent, and never had any agent in Illinois or

Wisconsin authorized to receive such payments for me I do not see that it is necessary for you to know the names of the National banks in this city. I presume that there are National banks in Galena who will transmit money for you if you desire it.

Very respectfully yours,

F. BRONSON, EXECUTOR, &c.

P. 93.

The letter, which was written to the complainant by Edward Chappell, junior, on 19th January, 1867 (p. 94), enclosed an affidavit of Mr. Frank Bostwick, son of Mr. William C. Bostwick, which was referred to as a proof of the authority of the latter. This affidavit is noticed in the answering letter of the complainant, dated January 31, 1867.

A few days afterwards, William C. Bostwick was in the city of New York; and, on the 7th day of February, addressed to the complainant the following letter:

French's Hotel, New York, Feb. 7, 1867.

FREDERIC BRONSON, Esq., New York.

DEAR SIR: In reply to your inquiries of this date, I have to say that, in making sale of lands in Wisconsin, under your instructions, I was only authorized to sell subject to your approval and confirmation of such sales, and was only authorized to receive and receipt to purchasers for the first instalment or payment of the purchase money of said sales; and that, in all payments made to me subsequently by such purchasers, I acted in receiving such payments, not as your agent, but as the agent of the party making such payment, and undertaking merely, as the agent of said party, to remit the payment to you. I was authorized by the terms of the contract of sale to Chappell to receive, as your agent, the first payment on said purchase, but all subsequent were to be made to you, in this city, by said Chappell; and, in receiving from said Chappell any other than the first pay-

ment on his purchase, I acted as his agent to receive and remit the money so paid, and not as your agent.

I was never, in fact, authorized by you to sell any of your lands, or any lands in Wisconsin, but only authorized to receive offers or bids for such lands, and to transmit said offers to you.

The contracts for sale were all made by you.

Yours, very respectfully,

WM. C. BOSTWICK.

P. 90.

The substance of the foregoing letter was afterwards, on 25th day of February, 1867, embodied in an affidavit, which is printed in the case at page 89 and at page 25. It shows that the affidavit of Mr. Wm. C. Bostwick's son was incorrect, which ascribed to Mr. Wm. C. Bostwick the authority to receive the disputed payments.

The following incident which occurred in February, 1860, illustrates the care which the complainant used to have it distinctly understood that all deferred payments on his contracts should be made to him, and that Bostwick was not authorized to receive them.

The form of land contracts which he used is at p. 23, 24, 25.

The second clause is as follows:

"Second. The said part of the second part, in consideration of the covenants herein contained, on behalf of the said part of the first part, agree to purchase of the said part of the first part the above described land, and to pay for the same, to the said part of the first part, or legal representatives in the said City of New York, the said sum of dollars, lawful money of the United States in the manner following; that is to say:

With interest to be computed, etc., on the whole sum that shall be from time to time unpaid, and to be paid

annually, both principal and interest to be paid in the said City of New York."

Shortly before the 9th of February, 1860, Mr. Bostwick received from the complainant a land contract in the above form, to be delivered to one Thomas Tormey, to which was appended the following note:

"William C. Bostwick, Esq., of Galena, Illinois, is authorized to receive and receipt for the first payment on this contract, all subsequent payments to be made to Frederic Bronson, in the City of New York."

Page 51.

The perusal of the memorandum arrested the attention of Mr. Bostwick, and led him to enquire if it was an intimation that a withdrawal of his employment was contemplated, which, he writes to the complainant, would cause him not less surprise than pain, not so much, by any means, from the pecuniary consideration connected with it, as "from the implied dissatisfaction on your part, with the manner in which I have transacted your business; and it occasions the more surprise that I have always endeavored to attend with fidelity and promptness to your business and interests, and have never before had any intimation whatsoever from you that you were not entirely satisfied."

The communication elicited from the complainant the following reply:

New York, February 15th, 1860.

WM. C. BOSTWICK, Esq., Galena, Ill.

Dear Sir:—The memorandum at the foot of Tormey's contract I have recently put on all my land contracts, to repel the construction lately sought to be put on it, that the first or other payments, if received by the agent, is an implied waiver of the claim for exchange, and *of the*

stipulation in the body of the contract that the money is to be paid to me in the City of New York.

In other words, it is but a repetition of the clause in the contract, as applicable to all except the first payment. As to the other payments, the risk of the payment and the exchange is to be borne by the buyers of the land. I was quite surprised and sorry that it should have received the interpretation you put upon it, which is entirely erroneous, and I was not aware that I had not sent you any contract since the question was raised, making the note pertinent and proper.

Yours truly,

F. BRONSON.

P.p. 52. 53.

It is respectfully submitted that nothing can be more explicit than this language.

Bostwick had been authorized to receive and communicate offers for the purchase of land.

If a sale was effected the complainant signed contracts in the form printed, and had been in the habit of forwarding them to Mr. Bostwick, with a special authorization to receive and remit the first cash payment from which his commission was to be deducted.

To avoid the possible implication that this receipt by Bostwick of a first payment might be a waiver of the provision in the contract, as to the payment of the future instalments in New York, Mr. Bronson appended the clause referred to, and when it was made the subject of an enquiry by Bostwick as to whether it was an intimation that his employment was to be withdrawn, Mr. Bronson wrote that its very purpose was to repel the implication of a waiver of the claim for exchange, *and payment to him in the City of New York.* That as to all deferred payments "*the risk of the payment and the exchange is to be borne by the buyer of the land.*"

In a letter addressed to William C. Bostwick, dated 2d of May, 1861, at page 57, the complainant in a case where the trustees of the Baptist Church, at Galena, had made application to Bostwick to remit for them, and in answer to some suggestion from Bostwick, the precise nature of which is not disclosed, the complainant said:

"The statement enclosed in your letter, showing the amount due to me, $40 80, on March 1, 1861, from the Trustees of the Baptist Church in Galena is correct, and I notice what you say as to exchange. While I am desirous of receiving payments promptly from my debtors, *through whom you remit*, I do not consider it just that the remittances to me should be based upon your bearing a portion of the exchange, *as they are well aware that their payments are to be made to me in this city without any contingencies, and at the time that their stipulations call.* Any understanding, however, between you and they as to the division of exchange, I of course cannot object to, *but shall expect them in all cases to remit to me at the times and as their agreements designate.* In this case of the payment to you of the trustees you may exercise your own discretion in its remittance, consistent with my receiving it within a reasonable time."

On 14th January, 1860, Mr. Bronson wrote "your favor of the 6th instant, enclosing draft, etc., for $760 98, has been received, and the proceeds will be applied as directed."

Page 64, Letter No. 22.

The complainant reserved to himself the right to receive deferred payments in New York, unless it be, in fact, impossible for a non-resident owner of lands to sell them on credit, through the intervention of a resident, without making that resident his agent for receiving these payments, and assuming the risk of his fidelity.

The facility of communication, which exists between the western and eastern territory, makes it fit, having due regard to the convenience of western resident purchasers of land, that the vendor, at New York should have the benefit of any fair and reasonable precaution he may take to avoid the necessity of appointing agents for the receipt of moneys which may with perfect convenience be paid to him directly.

THE COMPLAINANT HAS NOT AUTHORIZED THE OPINION THAT HE HAD, IN FACT, GIVEN TO WILLIAM C. BOSTWICK AUTHORITY TO RECEIVE THE DEFERRED PAYMENTS.

The evidence of such authority, if any exists must be sought for in the testimony of William C. Bostwick and his son; and the letters of the complainant.

William C. Bostwick, notwithstanding the written statement which he made on the 25th February, 1867, page 89, was examined as a witness for the defendants on the 25th August, 1868.

The payments in question had been received by his son, who signed his father's name, "Pr. F," or "Pr. F. Bostwick," page 38. The moneys, in whatever capacity received, had been misappropriated. The son, being at Galena, had made an *ante litem* affidavit, to the effect that, in the receipt of the money, his father was acting as the complainant's agent. Meeting the complainant in New York, William C. Bostwick made the written statements of the limits of his authority, which conform to the testimony above detailed. In them he referred to and corrected his son's affidavit. Eighteen months later, his deposition was taken at Chicago.

The infirmity of his character had yielded to the temptation to appropriate to his own use the money which he had received from the defendants.

If he were not urged by fear of molestation by the defendants, this thought, at least, may fairly be ascribed to him, viz: that the recollection of his breach of good faith would be less intolerable if the pecuniary loss were cast upon the complainant than upon his neighbors who were in the community immediately about him.

The following are the statements which are contained in his deposition:

"Somewhere about the month of December, 1866, I think Mr. Bronson called upon me at the hotel where I was stopping in the city of New York, and after some conversation in relation to the monies that had been paid to me by defendants in this connection, called my attention to the terms of the contract which required payments to be made to him in the city of New York, and assumed, in view of those terms, that I was not, strictly speaking, or legally, his agent for the receipt of any other than the first payments specified in the contracts. I assented to this view, but suggested that the practice had been for me to receive all the payments. Mr. Bronson said that did not, nevertheless, constitute me his agent, except merely for the purpose of receiving said first payments. The fact is, that I was at the time seriously involved in pecuniary troubles in my business, and was in a state of bewilderment that almost rendered me incapable of transacting business, and I felt apprehensive that Mr. Bronson might feel disposed to resort to some legal measures against me that might still further embarrass and distress me; and I very reluctantly got my own consent to sign a paper setting forth that I was not authorized in terms by Mr. Bronson to act as his agent. I was, moreover, at the time, exerting myself in making negotiations which I fain believed would relieve me from my embarrassments, and enable me to pay over to Mr. Bronson these monies, and save these defendants from trouble. I not only executed that paper with reluctance, but have never since ceased to regret having done so." Pp. 84, 85.

Again, he repeats:

"Mr. Bronson called upon me at French's Hotel to my best recollection, about a fortnight before I signed the affidavit, and in the conversation between us, (although, my recollection is not very distinct) I think Mr. Bronson took the ground that I was not acting as his agent in receiving monies of the defendants, but as their agent. My recollection is that I suggested to Mr. Bronson that I had uniformly received the monies and remitted to him, and I think he replied that that did not necessarily constitute me his agent in the face of the contract. He requested me at that time to sign a paper to the effect, I believe, that I was not authorized to receive monies for him, and under the pressure of troubles and embarrassments that beset me at that time, and the fear that Mr. Bronson might take some legal measures against me, I did not, I think, enter into any argument with him, but drew up and signed a paper to the effect that I was not authorized to receive more than the first payment upon the sale to these defendants." P. 87.

Again, he repeats:

"As I before have stated, I was overwhelmed with troubles and embarrassments in my business, and not the least of my burdens was this very item of the Chappell's payment, and I had greatly dreaded to see Mr. Bronson, and had avoided him as much as possible until I should be in a position to settle with him. He came upon me at French's Hotel entirely unexpected, and I was exceedingly disconcerted, confused and depressed. Mr. Bronson, after a short conversation, proposed to me to sign a paper disavowing my agency in relation to his business, and intimated to me the purport of such writing which he wished to obtain. I tried to evade it, desiring a little time for reflection, but he insisted upon it being done at once, and himself procured the paper of the clerk upon which the writing is made. We sat down together at a table and I wrote the paper, writing generally from intimations

which he had given me of his views and wishes in the premises. But I think, at his express dictation, I wrote that portion of the paper, writing which disaffirms my agency in relation to the Chappell matter. I do not think, if I had had time for, and been in the frame of mind for calm reflection, that I would have signed the paper. In regard to the affidavit I may say that I was in an equally disturbed state of mind when Mr. Calhoun called on me to sign the affidavit. If I had been in a frame of mind favorable to due deliberation and reflection I should not have signed the affidavit." Pp. 88, 89.

The point to be noticed in these statements is the occurrence of the following phrases, viz: "That Mr. Bron-"son after referring to the terms of the contract, assumed "in view of those terms, that I was not, *strictly speaking* "or *legally*, his agent for the receipt of any other than the "first payment, specified in the contracts. I assented to "this view, but suggested that the practice had been for "me to receive all the payments; Mr. Bronson said that "did not, nevertheless, constitute me his agent except "merely for the purpose of receiving said first payments."

It cannot be questioned that, if at that interview, Mr. Bronson appealed directly to the consciousness of Mr. Bostwick, that he knew that he never was, in any sense, whatever an agent to receive these payments the frame of mind in which the witness made his deposition would color that appeal, and readily transmute it into the saying ascribed to the complainant that he was not strictly speak-or legally an agent.

The absence of the complainant in Europe and his death on the 1st November, 1868, precluded any further statement from him.

The statement of the witness that he suggested "that the practice had been for him to receive all the payments, and that Mr. Bronson said that did not nevertheless constitute me his agent except merely for receiving the first

payment," does not prove that such a practice existed. How far he was occasionally authorized to receive particular payments by special carefully limited authorization appears from the correspondence, and the remark ascribed to Mr. Bronson necessarily referred to those remittances which had been made from time to time by purchasers, through Mr. Bostwick as their agent, and applied and credited by Mr. Bronson according to Mr. Bostwick's letter of advice or direction.

If monies were paid to Bostwick, to be remitted by him after the precaution taken by the complainant to specify in the body of the contracts that all payments, except the first, were to be made to him in New York with a special clause appended, that William C. Bostwick was authorized to receive the first or cash payments, and all subsequent payments were to be made to the complainant, in the City of New York, (Bostwick not having the possession of the contracts, which were always held by the complainant in New York,) it must be inferred that such payments were made to Bostwick for remittance, at the risk of the purchaser, and not at the risk of the complainant.

A brief further notice of the testimony of William C. Bostwick is proper.

He states that he transacted business with the defendants for the complainant as executor, in the capacity, as he supposed, at the time, of agent for Mr. Bronson in his capacity of executor.

Fol. 131.

He negotiated the sale, subject to the approval of Mr Bronson.

When he received the payment, he considered that he received it as the agent of Mr. Bronson, from the fact

that for 12 to 15 years he had been in the habit of receiving offers for land, communicating them, and if accepted, was in the habit, during all that time, of receiving payments on such sales, and remitting the same to Mr. Bronson.

(The complainant invites attention to the fact that the correspondence shews the method pursued in all transactions.)

That he called Mr. Bronson's attention to memorandum appended to land contract, in 1860, and that Mr. Bronson replied that the object of that communication was simply to put beyond question his right to charge the rate of exchange at Galena or New York.

(The complainant invites attention to the fact stated above, at pages 25–26 of this argument, that Mr. Bronson replied that the object of the memorandum was to repel the implication that he waived the stipulation that the money was to be paid in New York; that the risk of the payment, and the exchange, was to be borne by the buyers of the land.)

The witness proceeds:

"I continued to receive moneys on contracts, and remitting the moneys to Mr. Bronson, acting as his agent, as I understood it.

There were a large number of such contracts, although by the strict terms of the contract, the moneys were payable in New York to Mr Bronson, yet I considered that he waived that condition by assenting to my receiving payments at Galena and remitting them to him."

After Mr. Higgins left, I continued and acted as sole agent.

I advertised myself throughout the country as the agent of the Bronson lands (see a form of hand-bill at page 96,) which advertising was continued for a period of 12 or 14 years.

(In reference to these statements the complainant observes that in the frame of mind in which Mr. Bostwick deposed, if it had been possible for him to give an instance of Mr. Bronson's deviation from his careful method, he would not fail to specify it.)

No statement by Mr. Bostwick of an inference or conclusion can affect or impair the complainant's rights.

Whether he had a right to infer or conclude that he acted as complainant's agent, is a question for determination.

That is the issue which the complainant meets.

Mr. Bostwick for 15 or 20 years, in correspondence with Mr. Brouson, must have knownthat the latter did not regard him as his agent, and was ever careful not to treat him as such.

If, notwithstanding, he inferred that he was complainant's agent, and withheld from the latter the information that he had drawn such an inference, he was guilty of culpable reticence.

At the time of this examination as a witness in August, 1868, he could state what had been his mental conclusions at the time of the transactions in question, without much fear of contradiction.

The temptation to mis-state them was immediate and powerful.

That he yielded to it is a just inference, from the circumstances, and his previous conduct.

The cross-examination of William C. Bostwick, (folio 134 to 140), confirms the views which have been urged.

He was a practising lawyer, doing a general collecting and banking business, 60 years' of age. He was asked, "Were you ever complainant's general agent in regard to these lands?"

A. I have acted as his agent, as far as I have mentioned; I considered myself as his agent for the purpose of selling his lands, as I have stated.

He, the witness, did not pay the taxes.

The complainant acted as executor.

The complainant held the bond and mortgage.

Q. "Did Mr. Bronson especially authorize you at any time to collect and remit monies due him, as executor, on bond and mortgage?

A. On the bond and mortgage, I do not recollect that he did expressly.

Q. At what place did the mortgage provide that the monies should be paid?

A. In the city of New York.

Q. Had you been in the habit of collecting other moneys, due Mr. Bronson on account of bonds and mortgages, held by him?

A. No, I had not, this being the only instance of a bond and mortgage taken on the sale of land. In other and numerous instances of the sale of land on contracts, I had been in the habit of collecting monies for him, and transmitting it to him."

(The complainant remarks, that these instances are not specified, nor shown to be instances of deferred payments, which the witness was never authorized to receive, save in special cases, always accompanied by evidence of his authority, while obviously, in his banking business, he might be selected by purchasers to make remittances for them without involving Mr. Bronson in any manner as his principal).

Q. "Did Mr. Bronson ever approve or affirm the action you took in this particular transaction, or rather the action taken by your son, in receiving the first payment on the mortgage?"

A. No. I cannot say that he did.

Q. Did Mr. Bronson in any letters to you, or communications with you on the subject, expressly waive the conditions of the memoranda or the purport thereof, which memoranda you state, he caused to be affixed to certain contracts sent you for the sale of lands?

A. He did not expressly. P.p. 85, 86.

The following extract illustrates the operation of the witnesses' mind.

Q. "Were not the statements made and sworn to by you in said affidavit, (folio, 142) substantially true and correct?"

A. They were true, according to the literal and technical terms of the contracts upon or under which the monies were received by me, but in another sense the statements therein contained, would have to be received with some modifications.

Q What modifications do you refer to?

A "They are, for instance, whether Mr. Bronson had waived the conditions of the contract, which made the payments due in New York, by continuing as a common practice, without dissent to receive said payments through me, in view of a letter referred to in my direct examination, in relation to the endorsement on the contract."

(This repetition by the witness justifies the complainant in again stating that this practice did not exist; that the letter referred to expressly showed that payments at Galena were at the risk of the purchasers. That if purchasers did remit through Bostwick, who was a banker, and probably a solicitor of employment by them, in that character, the complainant, on the receipt of such remittances, was not called upon to object to the method they chose to employ.

If he had objected, he could have been charged with interfering in Mr. Bostwick's affairs in a manner to injure his business. If Mr. Bostwick received payments, and made remittances as agent for Mr. Bronson, he would have accounts with Mr. Bronson which, upon that hypothesis, he could not have failed for so many years to keep. No such accounts ever existed).

Q. "Can you state where, in any particular, said affidavit is untrue?" Please examine it.

A. I think it goes too far, as to denying any authority to receive monies as Mr. Bronson's agent.

Q. If said statement is in that respect untrue, how came you to make and swear to that statement?

A. I have attempted to explain that in my direct examination, and perhaps I need not say more here, than that I came to conclusions that might more properly have been left to the Courts to determine. I did not mean at the time to state what was untrue.

Q. How long a time elapsed, between your last interview with Mr. Bronson on the subject, and the time of making that affidavit?

A. I am uncertain about that; my impression is that it was within *a fortnight.*

Q. Did you not act in the matter of receiving payments from purchasers to Mr. Bronson, as the agent of the purchasers, and not as the agent of Mr. Bronson?

A. In one sense I acted as the agent of the purchasers, having reference merely to the terms of the contract; and in another sense, I acted as the agent of Mr. Bronson, having reference to the practice of his receiving payments of purchasers through me, without dissent.

Q. Do you not mean by your last answer, that in receiving monies from purchasers, you acted as their agent, but in remitting monies to Mr. Bronson, you acted as his agent?

A. No; that is not strictly what I mean. I mean that I might be regarded as the agent of Mr. Bronson, from the fact that I have stated from his acquiescence, from his receiving money without dissent.

Q. In communication with Mr. Bronson, did you hold to that view of the matter?

A. I don't think that I had any argument or controversy with Mr. Bronson on that subject."

Page 87.

The deposition of Frank Bostwick, son of William C. Bostwick, thirty-three years of age, clerk in a railway office, and resident at Galena, is to the following effect:

He understood that his father was agent for Frederic Bronson. He supposed he was, from correspondence which he had with him. He acted as agent for him in the

management of his lands. He would sell lands, pay taxes, receive money, and remit the same; and he appointed other agents to take charge of some portions of the lands in Wisconsin. "I know, of my own knowledge, that Mr. W. C. Bostwick received money upon the sale of the Bronson lands in Wisconsin. I knew a number of such instances. He received money of John Dinsdale, Edward Chappell, defendant in this suit, of one Shuttleworth, also from Thomas Tormey, and from quite a number of others, whose names I cannot now recall. He acted as agent for Mr. Bronson, I should think, ten or twelve years."

In answer to a leading interrogatory, he adds: "He was in the continuous practice of making sales of the Bronson lands, receiving payments and transmitting the same for a period of some ten or twelve years. This was done by him, as I always supposed, as Mr. Bronson's agent. He had two hand-bills struck off—one large and the other a small hand-bill. I think the large hand-bill was signed William C. Bostwick. It is my impression that the small hand-bill was signed William C. Bostwick, as agent of the Bronson lands.

Q. "Did William C. Bostwick send by mail copies of those hand-bills to the complainant?"

A. Yes, sir; we would send him notices whenever we had any struck off. I do not know whether Mr. Bronson received them or not.

Pages 46, 47.

[It is presumed that the hand-bill at page 96 is one of those referred to, it being an attorney and land-broker's notice of the most general character.]

The foregoing analysis of the evidence has failed wholly in its object if it does not show that Mr. Frank Bostwick's loose, general and inferential statements touch no point which has to be determined.

The precise method and care of the complainant has been shown—what he has done—what he has written—has been proved—what Mr. Bostwick has done is susceptible of proof—it would be deplorable if weighty concerns

and interests could, in spite of all precaution, be affected by testimony, given in the form in which it is presented by this witness.

His statements are inferential and general, to the effect that his father was the complainant's agent to sell lands—whereas, it appears that his father never assumed to bind the complainant, as his principal, in any transaction; that his father paid taxes, which it appears were paid by Gov. Dewey, (see page 85, fol. 134); that his father received and remitted money, which it is true, he may have received as first cash payments, or even as a banker selected and employed by the purchaser, the instances however of the receipt of which are not attempted to be specified, except by the mention of four names; that his father had a power of substituting agents, which power it is certain from the evidence, that Mr. Bronson did not confer.

The cross-examination of Mr. F. Bostwick shows that he could give neither the language of any letters, nor the date of any hand-bill, nor the date or amount of a single payment.

Page 48.

ANALYSIS OF LETTERS
FROM
F. BRONSON, ESQ., TO WM. C. BOSTWICK.

No. 1. March 3, 1865, (Page 52.)—If Messrs. Chappell will not carry out the contract and insist on a deed and mortgage, requests to be informed.

Will assent to their request—copper lands at Mineral Point are for sale.

No. 2. February 15, 1860, (Page 53,) Explains that the memorandum on land contracts is to repel any implication of a waiver of the stipulation for payment in New York.

Consults with Mr. Bostwick professionally as to foreclosure of a mortgage.

Postscript—Receipt of a first payment of Thomas Tormey $268 00 commissions on that sale, and one to C. C. Collins amounting to $80 00 retained.

"In the case of Watchler: You can settle with him on the terms you say he claims, and I do not wish you to remit any more than you receive from him; when you settle with him please send a statement of his account as you make it up. When I made up the account, I could only go by my books, as I did not know at what dates the payments were made to you. (Bostwick had written as agent for Watchler, who had purchased lands of complainant's brother, Oliver Bronson, and had probably been entrusted with the deed for the purpose of closing the transaction.)—See letter No. 22, page 64.

No. 3, February 16, 1860, (Page 54.)—Refers two applications inquiring price of lands, to report the offers with his opinion and advice. Finds no offer of one Kuleman in any of Bostwick's letters.

No. 4. November 14, 1865, (Page 54.)—Forwards contracts for persons named Smith.

No. 5. November 20, 1865 (Page 55.)—Authorises sale to Mr. Tormey.

No. 6. May 30, 1861, (Page 55.)—Encloses contract for south-east quarter of 22, 6. 2, W. Grant Co. authorizing Bostwick to receive, retain and apply the first payment for commissions.

No. 9. October 28, 1865, (Page 55.)—Entrusts Bostwick with a deed for delivery to Vellous Heath on receipt of the balance due, and with directions to remit it and forward the surrendered contract.

(This is a case of special authority, accompanied by evidence of it.)

No. 10. November 27, 1865, (Page 55.)—Accepts an offer and encloses a contract; authorizes acceptance of another offer.

No. 11, May 24, 1865, (Page 56.)—Requests expedition in closing the Chappell negotiation; also, the delivery of other deeds on receiving the balance due.

(Special authority accompanied by the evidence of it.)

No. 12, October 5, 1865, (Page 56.)—Encloses contract for one Gilman, to be delivered on his making the first payment; Bostwick to retain his commissions.

No. 13, September 16, 1865, (Page 56.)—Acknowledges receipt of Chappell bond and mortgage, and unexecuted contracts of Thomas Chapman; "I shall of course make no charge against you for preparing the contracts"—"Under the circumstances stated by you respecting Geo. Pettis, and with the expectation that he will make the payments you state he proposes to make, next fall, I will wait," &c. (Bostwick acting for the debtor.)

No. 14, May 14, 1861, (p. 57.)—A special authority to collect from S. J. Davis, $16.12; A. Miller, $23.34, and A. Kuleman, $21.64, taxes which they had failed to pay.

No. 15, May 2, 1861, (p. 57.)—Encloses a contract:

"The counterpart, with the first payment less your commissions, please send to me."

Acknowledges receipt of executed contract by Shuttleworth.

Reimburses Bostwick $19.61 for taxes on Legate lands with $5.00 for his services. "The tax payment, you will please include and claim in the foreclosure."

Then follows the statement quoted above, page 27, to the effect that payments are to be made in New York without any contingencies.

Acknowledges receipt of a cancelled contract with A. Kuleman, and calls Bostwick's attention to a balance of $8.65 in his hands out of the first payment of $100 on a new contract of A. Kuleman, dated Aug. 20, 1860, after deducting Bostwick's commissions.

No. 16, Dec. 27, 1860, p. 59.—Acknowledges $180 on account of a first payment, and authorizes Bostwick to retain his commissions out of the balance of the first payment. "Davis, you say, will pay in gold, which I should be willing to accept, provided he will consider the transmission of it by express at his risk, until received by me. If he makes his remittance in this way, you will not give him a receipt by me until I advise you of having received the money."

No. 17, 12th Dec., 1855, (p. 59.)—Acknowledges receipt of a last payment on the contract of John Berry, and returns a deed for delivery on surrender of contract. Accepts an offer.

No. 18, 27th March, 1856, (p. 60.)—Acknowledges receipt of a first payment, less commissions. Urges sale of the Legate lands.

No. 19, July 31, 1860, (p. 60.)—Accepts offers of Probst & Field, with directions to deliver contracts on receipt of the first payments; also, in the case of Wefel. Authorizes the delivery of a deed to Kuleman. (see letter No. 15, p. 58.) Encloses a contract for Dinsdale, with directions to receive cash payment and retain commissions.

No. 20, July 27, 1857, (p. 63.)—Acknowledges receipt of a cash payment from Kuleman:

"Yours of 21st is also received, with the enclosures as "stated, and the draft for $268. I have credited $263 on "the contract of Warren Gray, and $5 for forfeit money, "paid by Blanchard. I do not alter my contracts by "granting extensions, but if Mr. Gray pays as he proposes, "I shall not probably take any steps to enforce his con- "tract without giving him previous notice."

(This is a case, presumptively, of an application and action by Mr. Bostwick for Mr. Gray.)

Encloses contract for Reid, to be delivered on cash payment being made.

No. 21, July 17, 1861, (p. 64.)—Advice of crediting first payments. Commissions retained by Bostwick.

"If these contracts fall through and the land reverts, "the commissions to be refunded to me."

No. 22, Jan. 14, 1860, (p. 64.)—"Your favor enclosing "draft for $760.98 has been received, and the proceeds "will be *applied as directed*, (to wit, by Bostwick as agent "of the remitter.) Accepts offer of T. Tormey, and au. "thorizes deduction of commissions from first payment. "Declines to release Mr. Reid "as he has proposed to "you."

No. 23. Sept. 1, 1865 (Page 65).—Acknowledges re-receipt of $943 03, "with statement as to credits therefor." "In accordance with your statement, I applied $460 88 in payment in full on contract of Davies, also $115 65, as payment in full on contract of Reid; $175 on account on contract of Perkins, leaving unpaid $12 96; and $200, as cash payment, on contract of John Dinsdale."

No. 24. Dec. 27, 1864, (p. 65.)—Acknowledges receipt of $920, "which, as advised by you, I have applied as follows:" $100 to credit, Shuttleworth; $320 to credit, Miller; $500 to credit, Wright. "Interest to be computed to date received here."

No. 25. Oct. 27, 1865 (Page 65).—Encloses contract for P. Finnegan and another. Requests return of contract of Mr. Smith.

No. 26. July 30, 1861 (Page 66).—Acknowledges receipt of a draft of Ryland & Holloway on E. & R. Mead, Jr., & Co., for $405 37, and "the draft being paid, the amount, as advised by you, is applied as payment on contract of Probst."

No. 27. July 23, 1861 (Page 66).—Encloses contracts for J. & G. Robinson & T. Tormey. "Please return me

the counterparts, properly executed with the respective first payments, less your commissions."

No. 28. Dec. 23, 1864 (Page 67).—Advises his return from Europe about December 15, 1864.

No. 29. March 12, 1865 (Page 67).—Notices an application to purchase lands.

No. 30. Oct. 18, 1865 (Page 68).—Encloses two deeds to be delivered on payment of amounts named and surrender of contracts.

No. 31. August 18, 1865 (Page 68).—Encloses contract for Thomas Chapman; counterpart to be returned, with cash payment, less your commissions.

No. 32, June 18, 1860 (Page 68).—Encloses contract for Davies, with counterpart, which, with the first payment, less commissions, is to be returned.

No. 33. Feb. 11, 1861 (Page 69).—Re-encloses contract with Shuttleworth, with counterpart, "which, if he executes and makes the first payment, you may deliver mine, and return his with the first payment, less your commissions."

The alteration of Hale's contract is in conformity with my instructions.

Asks for counterpart of Davies' contract.

No. 34. March 19, 1856 (Page 69).—Returns a deed for Lewis Benedict, to be delivered on the payment or not of $5 81.

No. 35, Feb. 22, 1860 (Page 70).—Acknowledges receipt of..... $244 90
which I have credited on account of
trustees of Baptist Church of Galena..$40 00
Bostwick remitted for these trustees (see
letter 25, page 57)
Account, Andrew Reid, old contract....$95 15
Account, Andrew Reid, new contract...109 75
——— $244 90

"Please obtain the surrender and cancelment of the old contract, and Mr. Reid's execution of the new one, and return the old contract and his counterpart of the new to me."

No. 36, June 12, 1860 (Page 71.)—Encloses a deed for John Bosanko, "which I authorise you to deliver on his paying to you $500," the sale being for cash.

"The proceeds thereof, after your commissions are deducted, you will please enclose to me."

The complainant submits that the foregoing review of letters shows conclusively that the only payments Bostwick was authorized to receive were the cash payments, always by virtue of special authority given to him in each instance, or in other special cases where deeds were sent to him to be delivered, on condition of making certain specified payments.

The cases of the remittances, by letters 23, 24, 26, 35, were not in pursuance of any authority; the proceeds were applied as directed or advised; and, in those instances, Bostwick acted as the agent of the remitters.

Analysis of the Letters Signed by Elias L. Smith.

Mr. Bronson sailed for Europe, October 9, 1861 (see letter 4, p. 73-74,) and returned about 15th December, 1864 (see letter 28, p. 67.)

Twenty-one letters, written by Mr. Smith, are printed in the case (p. 71–82.)

Thirteen of these letters acknowledge the receipt of remittances from Bostwick, in every instance, in the following terms: "As advised by you, I have applied your draft as follows:"

Letter No. 1, March 10, 1864.
" 2, March 7, 1862.
" 3, April 10, 1862.
" 4, Nov. 22, 1861, and Oct. 10, 1861.
" 5, March 27, 1862.
" 7, March 31, 1864.
" 12, June 20, 1862.
" 13, March 9, 1863.
" 17, April 23, 1862.
" 19, Nov. 14, 1862.
" 21, April 17, 1863.

Seven of these letters authorize the collection of specified sums, in every case accompanied by the evidence of the special authority.

No. 6, May 16, 1863 (page 75.)—Enclosing bond and mortgage of William Bailey, with a satisfaction piece; remittance acknowledged.

No. 15, May 29, 1863 (page 80.)—Enclosing bond and mortgage of William Bailey, with a satisfaction piece; remittance acknowledged.

No. 7, March 31, 1864 (page 75.)—Enclosing deed for W. W. Field to be delivered on receiving payment due and surrender of contract.

No. 8, March 9, 1864 (page 76.)—Enclosing deeds, at Bostwick's request, to be delivered on receiving the amounts due and surrender of contracts.

No. 9, July 10, 1862 (page 76.)—Enclosing deed, at Bostwick's request, for Mary Wefel, to be delivered on a specified payment being made.

No. 11, June 20, 1862 (page 78.)—Enclosing contract for George Pettis, to be delivered on receipt of certain payment.

No. 14, Aug. 1, 1862 (page 79.)—Enclosing contract for Mr. Russell, to be delivered on receipt of a certain payment.

No. 18, June 10, 1862 (page 80.)—Enclosing contract for D. T. Parker, to be delivered on receipt of first payment.

Three of these letters, written in March, April and June, 1862, contain enquiries propounded by Mr. Smith, as follows:

No. 3, April 10, 1862.—"Permit me to call your attention to Alex'r Miller's contract for W ½ N. W. ¼ 25, 6, 2, who is in arrears for payments due 1st January last, and for taxes, 1860, paid for him—amount given below"—in response to which enquiry, it is inferred that Mr. Bostwick communicated some proposition from Miller, as Mr. Smith replied. No. 16, April 21, 1862 (page 80.)—"If Alex'r Miller will meet his payment, due in January last, within the month of May next, as stated in your letter of 16th inst., it will be satisfactory to me."

No. 5, March 27, 1862 (page 74.)—"How is it with Andrew Reid? Nothing has been received from him since February 20, 1860."

No. 12, June 20, 1862 (page 79.)—"I hope Messrs. Reid and McDonald will soon pay balance, and the interest to close account.

Two of the letters contain general expressions by Mr. Smith, in reply to some suggestions from Mr. Bostwick, as follows:

No. 15, May 29, 1863 (page 80.)—"I shall be pleased to hear from you as you intimate, in relation to parties who are in arrears with their payments."

No. 19, Nov. 14, 1862 (page 81.)—Your remarks upon purchasers in arrears with their payments are noted, and while it is proper that reasonable indulgence should be extended in proper cases, according to your judgment and discretion, under the circumstances I would suggest that it would be well not to encourage by too much leniency, any laxity in efforts to comply with the conditions of the contracts."

One letter, No. 20, Oct. 10, 1861, (p. 82,) consents to an extension of payment in the case, of two individuals, for whom Mr. Bostwick made an application to that effect.

It is submitted that the correspondence of Mr. Smith furnishes no evidence of the general authority of Mr. Bostwick to receive payments.

The remittances which he made, without request, were made under the terms of the contracts, at the risk of the purchasers, and on their behalf.

The special cases of specified first payments, on delivery of contracts, or specified payments on the delivery of deeds, or the surrender of a bond and mortgage, where Bostwick was furnished with the evidence of his authority in each instance, tend to show no waiver of the special terms of the contracts, or any general authority of Bostwick to act for the complainant.

The three instances of voluntary enquiry by Mr. Smith in respect to purchasers in arrears (letters 3, 5 and 12), are sufficiently accounted for.

Mr. Smith would naturally infer that Bostwick at Galena could give the information asked for, or even urge

the persons named to comply with their contracts without involving Mr. Bronson, absent in Europe, in the very risk he had been so careful to avoid.

The same remark applies, and with equal force, to the cases of Mr. Smith's replies to Bostwick.

"I shall be pleased to hear from you, as you intimate, in relation to parties who are in arrears with their payments, (p. 80,) letter 15."

"Your remarks upon purchasers in arrears are noted, and while it is proper that reasonable indulgence should be extended in proper cases, according to your judgment and discretion, under the circumstances I should suggest that it would be well not to encourage by too much leniency, any laxity in efforts *to comply with the conditions of the contracts*, p. 81, letter 19.

These phrases, written by Mr. Smith, in answer to remarks from Mr. Bostwick, are not evidence of a waiver by Mr. Bronson, or of an authority to Mr. Bostwick, from Mr. Bronson, to waive the conditions of these contracts.

CONCLUSION.

The complainant claims from the pleadings and the proofs:

That the defendants were bound, by the terms of the bond and mortgage, to make the disputed payments to him in the city of New York.

When they made these payments to Mr. Bostwick, they made them to him, at their own risk and for their own convenience.

Mr. Bostwick had no authority from the complainant to receive them, and knew that he had not because Mr. Bronson had in the particular instances which have been noticed called his attention to the terms of his contracts, and had used great care in all his transactions with Mr.

Bostwick not to say or do anything which might be construed as evidence of an intention to constitute Mr. Bostwick, his agent.

Whenever Mr. Bostwick had any authority to act, to deliver a deed or a contract, or receive a specified sum, he was in each individual case clothed with a special authority and furnished with the evidence of it.

The receipt by the complainant of remittances through Bostwick and the application of them according to his directions was obligatory, and warrants no inference of a waiver by Mr. Bronson of the terms of the contract.

Mr. Bronson was the executor of an estate, and his transactions were in a representative capacity.

It was his duty not to assume the risk of the transmission to him of deferred payments, and to require them to be made to him in the city of New York.

His precautions were reasonable in their form—just to the persons with whom he dealt.

His prudence in taking them is commendable for imitation. They should be regarded and full effect given to them.

The following statements show the amount which the complainant claims to be due on Feb. 1, 1871, according to two methods of computation.

The first method is in accordance with the presumed intention of the parties to the contract, the second method is according to the suggestion of the Circuit Court, that the bond did not call for more than the accrued interest on each instalment.

STATEMENT No. 1.

Bond and mortgage, dated 13th Feb. 1865.—		
Principal		$5,343 60
Amount payable Nov. 30, '65, with interest from date	$781 20	
(Interest from Feb. 13, '65, to Nov. 30, '65, 9 months 17 days $43 60)		
Amount payable Feb. 13, '66, with interest from date	651 77	
Amount payable Feb. 13, '67, with interest from date	651 77	
Interest on $5,343 60, two years, to Feb. 13, 1867		748 10
Interest on $927 13, from Feb. 13 to Feb. 23, '67, ten days		1 80
		6,093 50
Feb. 23, 1867. By cash		927 13
		5,166 37
Amount payable, Feb. 13, '68	651 77	
" " " " '69	651 77	
" " " " '70	651 77	
" " " " '71	651 77	
" " " " '72	651 78	
Interest on $5,166.37, four years to Feb. 13, 1871		1,446 58
Amount due, Feb. 13, 1871		6,612 95
	5,343 60	
Additional interest as computed	2,196 48	
	7,540 08	
Less payment as above	927 13	
Feb. 13, 1871, amount due		$6,612 95

STATEMENT No. 2.

Per condition of bond, dated Feb. 13, 1865.—		
Principal.....		$5,343 60
Payable Nov. 30, '65, with interest from date.....	$781 20	
Interest on $781 20 from Feb. 13, '65, to Nov. 30, '65, 9 months 17 days..		43 60
Payable Feb. 13, '66, with interest from date.....	651 77	
Payable Feb. 13, '67, with interest from date.....	651 77	
Interest on $1,303 54, two years, to Feb. 13, '67.....		182 50
Interest on $781 20 from Nov. 30, '65, to Feb. 13, '67, 14 months 13 days,		65 77
Interest on 927 13, from Feb. 13 to Feb. 23, '67, 10 days.....		1 80
		5,637 27
Feb. 23, 1867. By cash.....		927 13
		4,710 14

$781 20
293 67 Int.

1,074 87
927 13

Bal., $147 74. Int. on this sum from Feb. 13, '67, to Feb. 13, '71, 4 yrs..... 41 37

Bal. on $1,303 54, 4 years, from Feb. 13, '67, to Feb. 13, '71..... 365 00

Payable 13th Feb., 1868.....	651 77	
" " " '69.....	651 77	
" " " '70.....	651 77	
" " " '71.....	651 77	
" " " '72, 3,258 86..	651 78	

On $3,258 86. 6 years' interest from Feb. 13, '65 to Feb. 13, '71.....		1,368 71
Amount unpaid, Feb. 13, 1871.....		6,485 22
	5,343 60	
Add. interest as computed.....	2,068 75	
	7,412 35	
Less payment as above.....	927 13	
Feb. 13, 1871, amount due.....	$6,485 22	

JOHN J. TOWNSEND,

Jan. 28, 1871.

In pro. per.

John

STATEMENT No. 2.

Per condition of bond, dated Feb. 13, 1865.—		
Principal.....		$5,343 60
Payable Nov. 30, '65, with interest from date.....	$781 20	
Interest on $781 20 from Feb. 13, '65, to Nov. 30, '65, 9 months 17 days..		43 60
Payable Feb. 13, '66, with interest from date.....	651 77	
Payable Feb. 13, '67, with interest from date.....	651 77	
Interest on $1,303 54, two years, to Feb. 13, '67.....		182 50
Interest on $781 20 from Nov. 30, '65, to Feb. 13, '67, 14 months 13 days,		65 77
Interest on 927 13, from Feb. 13 to Feb. 23, '67, 10 days.....		1 80
		5,637 27
Feb. 23, 1867. By cash.....		927 13
		4,710 14

$781 20
293 67 Int.

1,074 87
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Bal., $147 74. Int. on this sum from Feb. 13, '67, to Feb. 13, '71, 4 yrs..... 41 37

Bal. on $1,303 54, 4 years, from Feb. 13, '67, to Feb. 13, '71..... 365 00

Payable 13th Feb., 1868.....	651 77	
" " " '69.....	651 77	
" " " '70.....	651 77	
" " " '71.....	651 77	
" " " '72, 3,258 86..	651 78	

On $3,258 86. 6 years' interest from Feb. 13, '65 to Feb. 13, '71.....		1,368 71
Amount unpaid, Feb. 13, 1871.....		6,485 22
	5,343 60	
Add. interest as computed.....	2,068 75	
	7,412 35	
Less payment as above.....	927 13	
Feb. 13, 1871, amount due.....	$6,485 22	

JOHN J. TOWNSEND,

Jan. 28, 1871.

In pro. per.

John J. Townsend

Supreme Court

OF THE UNITED STATES.

Appeal from the Circuit Court of the United States for the Eastern District of Wisconsin.

JOHN J. TOWNSEND, Executor of FREDERIC BRONSON, deceased, who was Executor of ARTHUR BRONSON, deceased;

Appellant,

vs.

EDWARD CHAPPELL, Senior, EDWARD CHAPPELL, Junior, and JOHN N. CHAPPELL,

M. M. COTHREN &
GEO. W. LAKIN,
Solicitors for Appellees

SUPREME COURT OF THE UNITED STATES.

JOHN J. TOWNSEND, EXECUTOR OF FREDERICK BRONSON, DECEASED, WHO WAS EXECUTOR OF ARTHUR BRONSON, DECEASED, APPELLANT,

VS.

EDWARD CHAPPELL, SENIOR, EDWARD CHAPPELL, JUNIOR, AND JOHN N. CHAPPELL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF WISCONSIN.

IN CHANCERY.

POINTS AND ARGUMENT FOR APPELLEE.

STATEMENT.

1. The appellant filed his Bill to foreclose a mortgage and bond, dated February 13, 1863, executed by the appellees to Frederick Bronson, of New York, executor of the last will and testament of Arthur Bronson, of the same place. The mortgage and bond were executed to secure part of the purchase money of the mortgaged premises, situated in La Fayette Co., Wis. William C. Bostwick, of Galena, Ill., by and through whom the business was transacted, was the agent of

Frederick Bronson, and as such acted for him in and about said business, and, afterwards, as such agent received several instalments
2 which became due, and receipted for the same in the name of his principal, Frederick Bronson. Said Wm. C. Bostwick, who had been doing a large Banking and real estate business in Galena, failed, having a part and portion of said money in his hands. The appellant and mortgagee refuses to credit the appellees and mortgagors with any more money than he, Bronson, actually received for the reason, as he alleges, that Bostwick was not his (Bronson's) agent, and was not authorized to receive any payments, except the first one.

It is not denied by the appellant but that the appellees paid the money to Bostwick, which they claim to have paid; but the appel-
3 lant insists that they paid it to the wrong man, and that they, the appellees, must be the losers. So that, the point to be settled and decided is whether the payments made by the Chappells to Bostwick, are the same, in law and equity, as if they had been made directly to Bronson. Or to be more direct, the point to be decided is whether Bronson and Bostwick sustained to each other the relation of principal and agent, or had dealt with each other, and with the community in such a way and manner, and to such an extent, as that the Chappells had a right to infer and to act upon the hypothesis, that he, Bostwick, was *de facto*, the agent of Bronson. If he was such
4 agent, or, if Bronson mis led the Chappells into the belief that he was such agent, then payment to Bostwick was, in law payment to Bronson.

How stand the law and the testimony?

II. Was Wm. C. Bostwick Bronson's agent, in respect to the business of receiving the money? To answer in the affirmative, is to affirm the decree, and to decide in favor of the appellees.

Bostwick did not act by, or under any letter of attorney from Bronson, and yet he was his authorized and recognized agent. The appellant admits this, but claims that Bostwick's agency was limited
5 to the transaction of the business in part, and to the receiving and receipting for the first payment on the mortgage and bond, or contract, so far as Bostwick received money and *paid it over to Bronson*, the agency is not controverted; but in respect to the money received by Bostwick of the Chappells, and *not paid over* to Bronson, the controversy about the agency begins, and continues co extensively with the non payment. It was when Mr Bostwick failed, that the question of non agency was raised, and never until then.

It is apparent that long before, and on the 13th of February, 1865, Bostwick was the real estate agent of Bronson, residing at Gale-
6 na, Ill, then a sort of metropolis of the north-west, in different parts of which Bronson owned large tracts of land How long did that agency continue? The testimony discloses no discontinuance, or revocation, or denial, or repudiation of such agency until after Mr Bostwick's failure Hence such agency must be deemed and taken to have continued until after the payments were made by the Chappells to Bostwick. That being the case, payment to Bostwick, the agent, was payment to Bronson, the principal.

Counsel for the appellant say, it is true that the agency continued, but that the agency was *limited*, and extended only to giving
7 authority to Bostwick to receive the first payment on each and every contract.

Now let us examine and ascertain whether there is anything in the case to justify the conclusion, that such agency was actually circumscribed and confined to the receipt of first payments on the several and numerous land contracts which were made by Mr. Bostwick, for his

principal. The specific, general and universal course of dealing, adopted, pursued and carried on, not only with the Chappells, but with numerous other parties, near by, and remotely distant from each other, in the extensive real estate business, of which Bostwick had the management for Bronson, will serve to solve the problem and to explain the fancied mystery.

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"The act done (Greenleaf Ev 2d. vol 59 sec.) if lawful is considered as the act of the principal. It is not always necessary that the "authority should precede the act; it may become in law the act of "the principal, by his subsequent ratification and adoption of it." (Also see Story on agency, secs. 230—260.)

"The evidence of agency (2 vol. Greenleafs Ev. 60 sect.) is either "*direct* or *indirect*." * * It is indirectly established by evidence of the "relative situation of the parties, or of their habit and course of

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"dealing and intercourse, or it is deduced from the nature of "the employment or from subsequent ratification." (Also, Story on agency 45 and 47 sects., and 2d Kent, 612, 613 * *

"Having himself (Greenleaf Ev 2 vol., 65 sect. Hare and Wallace's American Leading Cases, 398—404) recognized another as his agent * * the principal is not permitted to deny the relation, to the injury of third persons who have dealt with him as such."

What that course of dealing was must be gathered from the testimony, and from the correspondence of the several parties from different points, and at different times, embracing and covering a

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period of from 12 to 14 years. The testimony which we produce is of a kind that no man and no number of men can swear down, because it eminates from different points and converges to one common point, as from the circumference to the centre, so as to produce a conviction which is irresistable. Swearing to agency, or non-

ageney, or riveting and welding together an acre of oaths, and thrusting them into opposite scales, could not strengthen, weigh down, vary, disturb, or remove that conviction. With what pertinacity and zeal that is sought to be done is evinced by the testimony of Walter H. Calhoun (29, 30, and 31 pages of printed record) who quotes what

11 he denominates a supplementary article, subjoined to every contract, in words and figures as follows:

"William C. Bostwick Esq., of Galena, is authorized to receive "and receipt for the first payment on this contract, all subsequent "payments to be made to F. Bronson, in the City of New York"

"FREDERICK C. BRONSON, EXR."

What explanation can be given of this language consistent with the existence of Bostwick's agency and its continuance after the first payment, and his authority to receive subsequent payments? We will furnish a satisfactory explanation. To do this we will concede

12 what his friends and all who knew him claim for him, to wit: That he was a prudent, careful, shrewd, money making man, whose estate and income were large. He desired them to be larger. What, in the way of interest and exchange he could get *without imperilling his capital*, he wanted and *exacted*. The sharpest "Wall Street" clauses and provisions were carefully adjusted and incorporated into his contracts, bonds and mortgages, so that the whole could be declared due and payable, at once, in case of the least default on the part of the obligor. The skill and ingenuity of the money-lender's brain were called into requisition to frame some scheme or

13 device by which he could receive exchange as well as interest, and therefore the bond required the payments to be made in New York, and he was determined to have what the bond called for, even though the money should be paid to his agent, Mr. Bostwick in Ga-

lena. Mr. Bronson desired to "*repel the construction*," and the conclusion that he was not to have exchange as well as interest. He had unlimited confidence in his agent, Mr. Bostwick, who was really a good and trustworthy man, and whose reputation was of the highest order. Mr. Bostwick was surprised and grieved beyond measure, when in Feb 1850, he beheld the memorandum at the foot of the
14 Tormey contract (51st page of printed record) to the effect, that after the first payment, all subsequent payments were to be made to Bronson in New York. With what terrible weight that fell on the agent is shown by Bostwick's letter of Feb 9, 1850, on page 51 of the printed record. Mr. Bronson's answer to that letter (52d page of record) sets the matter all right, and demonstrates as clearly as language can demonstrate, that he *did not* intend to limit his agent in Galena to the receipt of the first payment, but that he did intend that he should collect the whole, *principal, interest*, and *exchange*, and this letter is express and direct authority to do so, or rather, it is a
15 direct recognition of the authority which the agent had long exercised, and which he afterwards, continuously exercised, without any objection on the part of the principal, until long after the Chappells made the subsequent payments, and until after bankruptcy overtook the agent who had failed to remit to his principal.

That letter is the key which unlocks the book—the Œdipus that solves the enigma, and grinds the appeal to powder. Here it is, as follows: (Page 52, of printed record.)

NEW YORK, *February 15th*, 1850.

WM. C. BOSTWICK, Esqr, *Galena, Ill's.*

DEAR SIR: "The memorandum at the foot of Tormey's contract
"I have recently put on all my land contracts to repel the con-
16 "struction lately sought to be put on it, that the first or other
"payments, if received by the agent, is an implied waiver of the

"claim for exchange, and of the stipulation in the body of the contract,
"that the money is to be paid to me in the City of New York. In
"other words, it is but a repetition of the clause in the contract, as
"applicable to all except the first payment. As to the other pay-
"ments, the risk of the payment and the exchange is to be bourne
"by the buyers of the land. I was quite surprised and sorry that it
"should have received the interpretation you put upon it, which is
"entirely erroneous, and I was not aware that I had not sent you
17 "any contract since the question was raised, making the note
"pertinent and proper.

"Yours truly,

F. BRONSON."

The construction which Mr. Bronson gives of that memorandum, which the appellant clings to with so much tenacity, as going to show that Bostwick's agency was *limited* to receiving *first payments* on contracts, ought to end the controversy. But as it does not, we must advance in the argument. That construction of Mr. Bronson's was acted upon through a series of years. In the postscript to his let-
18 ter of Feb. 15, 1860, page 54, of record, he speaks of remittances made on account of sales to one Collins and Thomas Tierney, and of a settlement to be made with one Watchler. In Bronson's letter to Bostwick dated May 24, 1865, (56 page of printed record) he says: "I have been hoping every day to hear from you relative to the Chappell sale and other matters still open." * * *
"Please close also the delivery of the other deeds on hand on receiving *the balance* due. I hope that you will be able to effect sales "of the residue of the Legate lands on favorable terms soon."

By letter of May 14, 1861, (57 page of record) Bronson writes
19 to Bostwick that Davis, Miller, and Kuleman have severally neglected to pay the taxes on the lots contracted to them respectively, and requests his said agent to collect and remit to him the amount due from each, "*with interest* from May 7th, instant."

In his letter of May 2d, 1861, (57th page of record) Bronson recognizes the discretion of his agent in favor of the "*Baptist Church*" in abating a portion of the exchange."

In his letter of Dec. 12, 1855, to Bostwick, Bronson acknowledges the receipt of a draft for $77 03, for the *last instalment* and interest, due on the contract of John Berry. (Record 60 page.)

20 Sept. 1, 1865 (65th page of record) Bronson writes to Bostwick *inter alia*, acknowledging the receipt of $460.88, by payment in full of contract of S. J. Davis; also $115.65, in full on contract of Andrew Reid, &c., &c. These were not *first*, but *last payments*.

In letter of Oct. 18, '65, (68th page of record) Bronson directs his agent to deliver to the purchasers his deeds on their surrendering the contracts, and paying the considerations

There are numerous letters from Bronson, and from Elias L. Smith, his attorney, showing conclusively, that Bostwick acted and continued to act as the general real estate agent of Bronson, and that he received first, intermediate, last, and all sorts of payments, and that

21 he did everything that a general agent might, or could do, and that everything was ratified except the *non-remittance* of the money which the agent received of the Chappells!

These letters and the acts of Bronson, embracing his general course of dealing, estop him from denying that Bostwick was his agent. They are so many monuments, on each of which is recorded the general agency of Bostwick, so that a pyramid of oaths, attempting to deny or controvert such agency, would be of no avail.

I would be brief, and would abridge the argument; though the field widens and lengthens as I advance. How shall I argue up,

22 or down, that affidavit of Feb 25th, 1857, (record page 25) extorted by Bronson from Bostwick when the latter was in Wall Street struggling for life. It was then and there that Bronson brought his machinery and tools to bear. The knife was whetted and the morsel of flesh surveyed. Under the terror of arrest and the tombs, Mr. Bostwick subscribes and swears to an affidavit drawn up or superintended by Walter H. Calhoun, Bronson's attorney, who administers the oath. It was a strong game, and a desperate trick to have Bostwick pledged and committed to Bronson's theory and line of swearing; to have his agent *construe*, under oath, the relation

23 that had existed for years between him and his principal, and to

circumscribe and limit the effect of the documents, facts, records, and testimony which proved that relation! The sublime impudence and absurdity of the thing are worthy of a Shylock. But no rational man can be deceived by such a scheme.

Mr. Bostwick was an honest man, but was not prepared, voluntarily, to be butchered in Wall Street. Few men have the nerve for martyrdom; and he, like Harold in Normandy, echoed the oath, which by force was crammed into his mouth by the Norman.

On the 25th of August, 1868, more than a year after he was un-
24 der duress in New York, in Chicago, Mr. Bostwick is called upon in the usual way, on due notice to the parties, to give his deposition in this case (record page 83.) In that deposition he states facts, and not conclusions or constructions. By that deposition it is shown that he was the general agent of Bronson through a period of from 12 to 14 years, and that he received all sorts of payments down to the closing up of the land contracts. (Read the deposition.) That part of Bostwick's testimony (Record page 85.) which narrates the interview between the principal and agent, ought not to be overlooked. At that interview Bronson called Bostwick's attention
25 to the proviso of all his contracts, that all the payments after the first were to be made in New York; and in view of that he assumed that Bostwick was not "*strictly speaking*" his agent, for the receipt of any other than the first payments. Bostwick nominally assented to this view or construction, but suggested "that the practice "had been for him (Bostwick) to receive all the payments." "Mr. "Bronson said that did not, nevertheless, constitute me (Bostwick) "his agent, except merely for the purpose of receiving said first pay-"ments."—By this it appears that Mr. Bronson was not only a good financier, but a *tolerable* lawyer!

26 The latter part of Bostwick's testimony explains how he was

ensnared, in New York, into signing the projected affidavit, by which it was sought to limit and deny the agency, and to repudiate the acts of the agent.

They did what they could to change the truth to falsehood. But we are grateful that this Asmodeus and his staff were temporarily appeased by so frail an offering—a sham,—a false and hollow sacrifice of their own invention and handiwork, but which served to divert the avenging avarice of the money-god from the object of his wrath and permitted the disheartened, unfortunate victim to depart from
27 Wall Street, and the atmosphere and smell of dungeons, to his family and home in Galena.

> "Gold banished honor from the mind,
> And only left the name behind."

The party no doubt had magnanimous, noble and generous qualities, but they were not evolved in this case, or wasted upon the barren subjects that barred the increase of his exchequer

It is much to our disadvantage that these original, ancient, faded, dingy, tattered and fragmentary scraps, epistles and documents, which came into existence, without any design or reference to the ob-
28 ject or end to be subserved, because many of them do not relate, specifically, to the Chappell's bond, but to other matters showing the unlimited character of Bostwick's agency—it is to our disadvantage I say, that the originals are not here in Court, for inspection. They would beget an inspiration and conviction which the printed record cannot produce They are only a few leaves that have been rescued from the correspondence of that vast land agency, which Bostwick managed for something less than a quarter of a century, in the north west. These lines though few, like the Sibylline leaves, are precious, for they promise to save the Chappell's and their fami-
29 lies from being driven from their farms and their homes. It is

impossible that this fragmentary testimony could have been manufactured for the occasion; and no man, even in this age of affrontery, pretends that it was. Hence its superiority to *affidavits*, made to order in the financial metropolis where stock jobbers and oath brokers get up "corners" and command and ruin the market. A moiety of such testimony as the Chappell's have fortunately rescued from destruction, proves the agency of Bostwick, co extensively with our defence, and annihilates every subterfuge and pretext coined in the mint of fiction to overthrow it. The appellant, investing in that
30 coin, will barely get his money's worth, because the counterfeit, though a master-piece of artistic execution, has not the requisite weight, and, to the practiced eye and touch, reveals its qualities.

III. On the trial of the case, the complainants' counsel insisted that the written contract to pay in New York could not be changed or varied by parol testimony; and that to allow the Chappells to prove that the money was paid to Bronson, or to his agent, in Galena, when the contract, in terms, required payment to be made in New York, was a violation of the rule, and was allowing the written contract to be varied by parol testimony.

31 It is sufficient to say that the Chappells do not seek to change or vary the written contract, by parol, or otherwise. No matter where the money was to have been paid. If Bronson, or his agent, received the payments, *angekere*, they could be nothing less than payments, and a satisfaction of the demand *pro tanto*. I shall refrain from arguing, or attempting to elaborate that position.

The opinion of the Court below, (printed record 105 page) shows that the case was carefully and elaborately considered, as it really was, after full and persistent argument by counsel of the respective parties. The attention of this Court is respectfully called to that
32 opinion.

To go over the whole testimony, or even to refer to every item of it, in this argument would be a work of supererogation.

Everything in or connected with the case points to, fortifies, establishes and confirms the conclusion that William C. Bostwick was the agent of Frederick Bronson, and was authorized to receive the money which the Chappells paid to him as such agent. Payment to the agent was payment to the principal.

The argument is finished.

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